

## CHAPTER Env-Sw 300 SOLID WASTE PROGRAM: PERMITS

Statutory Authority: RSA 149-M:7

## PART Env-Sw 301 PURPOSE AND APPLICABILITY

Env-Sw 301.01 Purpose. The purpose of the rules in this chapter is to establish provisions for administering a solid waste management facility permit system pursuant to RSA 149-M.

Env-Sw 301.02 Applicability. The rules in this chapter shall apply to solid waste management activities regulated under RSA 149-M.

## PART Env-Sw 302 SOLID WASTE FACILITY PERMITS

Env-Sw 302.01 Purpose. The purpose of the rules in this part is to:

(a) Describe the system of permits established by the solid waste rules for authorizing construction, operation and closure of solid waste management facilities pursuant to RSA 149-M:9; and

(b) Identify permit-exempt facilities pursuant to RSA 149-M:7, V and RSA 149-M:9, I.

Env-Sw 302.02 Solid Waste Permit Required. Except as provided in Env-Sw 302.03, a facility at which solid waste is collected, stored, transferred, processed, treated or disposed shall do so only in accordance with a permit issued by the department pursuant to RSA 149-M:9 and the solid waste rules.

Env-Sw 302.03 Solid Waste Permit Exemptions.

(a) Pursuant to RSA 149-M:9, I and subject to the provisions of Env-Sw 305.04(b), no permit shall be required to haul or store manure being used as fertilizer including the production of compost.

(b) Pursuant to RSA 149-M:7, V and subject to the provisions of Env-Sw 305.04(b), no permit shall be required to:

- (1) Collect, store, and transfer a waste as specified in Env-Sw 408;
- (2) Process or treat a waste, for reuse or other purposes, as specified in Env-Sw 508, Env-Sw 608, and Env-Sw 708;
- (3) Landfill a waste as specified in Env-Sw 810;
- (4) Land spread ash from the combustion of virgin wood as specified in Env-Sw 1704;
- (5) Manage a waste that has been formally declared by the generator, in accordance with Env-Wm 502.01(c)(2), to be a hazardous waste, provided that the waste is managed in accordance with the requirements of RSA 147-A and the hazardous waste rules;
- (6) Manage virgin wood by above ground methods not including composting, provided that:
  - a. The virgin wood is actively managed;
  - b. Management practices comply with the universal facility requirements in Env-Sw 1000;

- c. Stockpiles conform to the requirements in Env-Sw 404.05;
  - d. The virgin wood is not mixed or co-mingled with any other wastes or materials at the waste generation site or any other location; and
  - e. If combusted, the facility complies with all provisions of Env-A 1000;
- (7) Conduct bench scale research and development projects within a building or other location used for research studies, provided that practices comply with the universal facility requirements in Env-Sw 1000;
- (8) Manage boiler slag from the combustion of coal, destined for use as a raw material for commercial and industrial purposes, provided that:
- a. The boiler slag is actively managed; and
  - b. Management practices comply with the universal facility requirements in Env-Sw 1000;
- (9) Collect, store, transfer, process, treat, or dispose of waste concrete, cement, brick, other inert masonry materials, or bituminous concrete, provided that:
- a. The waste is actively managed;
  - b. Management practices comply with the universal facility requirements in Env-Sw 1000;
  - c. The materials comprising the waste are derived from virgin materials only;
  - d. The materials comprising the waste are fully cured;
  - e. The waste is free of any materials or substances that have the potential to leach contaminants to groundwater or surface water or to emit pollutants to the air, including lead paint, asbestos, and chemicals;
  - f. If landfilled, the bituminous concrete waste is not ground or pulverized; and
  - g. The activity occurs after March 30, 1999; and
- (10) Collect, store, and process wooden pallets and wooden crates into wood chips, provided that:
- a. The wood chip is certified for distribution and use pursuant to Env-Sw 1500 and accordingly managed;
  - b. The pallets and crates are actively managed;
  - c. Management practices comply with the universal facility requirements in Env-Sw 1000;
  - d. The pallets and crates comply with the toxics in packaging requirements in RSA 149-M:32 - 40;

- e. The pallets and crates have not been treated in any way, including painted or stained, except for labeling purposes, or pressure treated;
- f. The pallets and crates are free of glues and adhesives;
- g. The pallets and crates are empty;
- h. The pallets and crates are not otherwise contaminated with foreign substances;
- i. Stockpiles conform to the requirements of Env-Sw 404.05; and
- j. All residual waste resulting from the management of the pallets and crates, including nails and fasteners, is actively managed in accordance with all applicable rules and regulations.

Env-Sw 302.04 Solid Waste Permit Types. The solid waste rules shall establish a permit system comprised of the following permit types:

- (a) Standard permit, pursuant to Env-Sw 314, for a facility meeting each of the following criteria:
  - (1) The facility is not a permit-exempt facility in Env-Sw 302.03;
  - (2) The facility is not eligible for a permit-by-notification pursuant to Env-Sw 407, Env-Sw 507, Env-Sw 607, or Env-Sw 707;
  - (3) The facility is not eligible for a research and development permit pursuant to Env-Sw 312;
  - (4) The facility is not eligible for an emergency permit pursuant to Env-Sw 313; and
  - (5) If the facility is a temporary permit facility, it elects to continue operating following call of the temporary permit and is not a landfill;
- (b) Temporary permit, for facilities that obtained temporary permit status prior to October 29, 1997 and continue to operate under such status;
- (c) Permit-by-notification, pursuant to Env-Sw 311, for certain limited waste management activities, as specified in Env-Sw 407, Env-Sw 507, Env-Sw 607, and Env-Sw 707 based on the functional classification of the facility;
- (d) Research and development facility permit, pursuant to Env-Sw 312, for research and development projects as defined by Env-Sw 104; and
- (e) Emergency permit, pursuant to Env-Sw 313, for facilities which operate for a limited period of time in response to an emergency for which no other readily available response exists and for which a delayed response to obtain another type of permit will result in an unnecessary risk to public health, safety or the environment.

Env-Sw 302.05 Solid Waste Facility Types. Facility permits shall be issued on the basis of facility type according to the following facility functional classifications:

- (a) Land disposal sites, including landfills, as defined by Env-Sw 103.32;
- (b) Processing/treatment facilities, as defined by Env-Sw 104.13, including:
  - (1) Composting facilities; and
  - (2) Incineration facilities; and
- (c) Collection, storage and transfer facilities, as defined by Env-Sw 102.35, including:
  - (1) Transfer stations; and
  - (2) Recycling centers.

Env-Sw 302.06 Permitting System Criteria. The following factors shall be used in the solid waste rules to determine the applicable permitting requirements:

- (a) The type of permit;
- (b) Duration of facility operations;
- (c) The functional classification of a facility; and
- (d) The type of waste handled by the facility.

#### PART Env-Sw 303 FILING PROVISIONS FOR APPLICATIONS, REGISTRATIONS, AND REPORTS

Env-Sw 303.01 Purpose. The purpose of the rules in this part is to specify requirements for filing applications, registrations and reports required by the solid waste rules.

Env-Sw 303.02 Applicability.

- (a) The rules in this part shall apply to all persons filing the following applications:
  - (1) New permits, pursuant to Env-Sw 311 through Env-Sw 314;
  - (2) Modification of existing permits, pursuant to Env-Sw 315, including permit transfer and permit renewal applications; and
  - (3) Waivers of any requirement of the solid waste rules, pursuant to Env-Sw 202.
- (b) The rules in Env-Sw 303.03 and Env-Sw 303.04 shall also apply to persons filing facility registrations pursuant to Env-Sw 309.
- (c) The rules in Env-Sw 303.03 and Env-Sw 303.04 shall also apply to persons filing facility reports required by the solid waste rules, including status reports such as notices of intent to construct or operate, annual reports, quarterly reports for landfills, compliance reports and other facility reporting data specified by the solid waste rules.

Env-Sw 303.03 Basic Filing Requirements.

- (a) Applications, registrations and reports shall be prepared:
  - (1) On and with such forms as the department provides; or

(2) If no form is provided pursuant to (1) above, on paper supplied by the applicant in a format consistent with the application content and format requirements specified by the solid waste rules for the particular type of application, registration or report being filed.

(b) Applications, registrations and reports shall be signed as specified in Env-Sw 303.04.

(c) Applications shall be submitted to the department in triplicate, except that applications for a permit-by-notification pursuant to Env-Sw 311 and for a type III permit modification pursuant to Env-Sw 315 shall be submitted in quadruplicate, with stamped legal sized envelopes addressed in capital letters to the applicant, the host municipality and host solid waste management district. The envelopes shall bear no return address.

(d) Registrations pursuant to Env-Sw 309 shall be filed in duplicate.

(e) Facility reports shall be filed in duplicate.

(f) All applications shall be submitted with the fee specified in Env-Sw 310, if any.

(g) Applications shall be submitted with the compliance information required by Env-Sw 303.13.

(h) Except as provided in (i) below, all components and copies of an application, registration and report shall be submitted together at the same time.

(i) If the content and format requirements for a particular type of application require the applicant to submit personal and business disclosure information pursuant to Env-Sw 316, the applicant shall:

(1) Submit the information as specified in Env-Sw 316 directly to the New Hampshire department of justice, office of attorney general, environmental protection bureau (NHDoJ) on or before the date the balance of the application is submitted to the department; and

(2) Provide proof thereof to the department with the application.

#### Env-Sw 303.04 Signature Requirements.

(a) Each application, registration and report shall be signed by the applicant, registrant or permittee as applicable.

(b) If the applicant, registrant or permittee is other than an individual, the application shall be signed by the person(s) duly authorized to sign for the applicant, registrant or permittee as applicable.

(c) The applicant's, registrant's or permittee's signature shall constitute:

(1) An affirmation that the material and information submitted is correct and complete to the best of the applicant's, registrant's or permittee's knowledge and belief;

(2) An acknowledgment that any approval granted based on false or incomplete information shall be subject to revocation or suspension pursuant to Env-Sw 306, and civil or criminal penalties;

(3) An agreement to pay the outstanding balance of the application fee due pursuant to Env-Sw 310, if any, upon presentation of an invoice; and

- (4) For applications not subject to Env-Sw 1400, certification of financial responsibility pursuant to Env-Sw 1005.08(b).
- (d) Each application shall be signed by the owner and land owner, if different than the applicant.
- (e) If the property owner is other than an individual, the application shall be signed by the person(s) duly authorized to sign for the property owner.
- (f) The property owner's signature shall constitute an affirmation that:
  - (1) The applicant has, or shall be granted, the legal right to occupy and use the property on which the facility is or will be located for the purposes specified in the application; and
  - (2) The property owner shall grant access to the property for closure and post-closure monitoring of the facility and site as required by the solid waste rules.
- (g) All signatures shall be original signatures on all copies of applications, registrations and reports filed with the department.

Env-Sw 303.05 Notice of Filing to Abutters.

- (a) If the application content and format requirements, as provided in Env-Sw 311 through Env-Sw 315, require the applicant to provide a notice of filing to abutters, the applicant shall:
  - (1) Provide notice as specified by (b) through (e) below; and
  - (2) Place a copy of the application at a publicly-accessible location, for example the public library or town hall, for public review until final action on the application is taken by the department.
- (b) The notice of filing shall be:
  - (1) Sent by certified mail, return receipt requested; or
  - (2) Delivered in hand, in which case a signed acknowledgment from the recipient that the notice was received shall be obtained.
- (c) The notice of filing shall be sent or delivered before the date the application is filed with the department, but not earlier than 30 days before that date.
- (d) If the applicant or the owner of the facility site owns any abutting parcel of land, the notice of filing shall be sent to the owner(s) of the next parcel(s) not owned by the applicant or facility site owner.
- (e) The notice of filing shall include the following information:
  - (1) A statement that an application is scheduled to be filed with the department, including the type of application being filed and the anticipated filing date;
  - (2) Facility identification and location, including:
    - a. Facility name;

- b. Permit number, if applicable;
  - c. Street address; and
  - d. Municipality;
- (3) The name(s) and mailing address(es) of the:
- a. Applicant, which in the case of an application for permit transfer shall be both the existing and proposed permittee;
  - b. Facility owner;
  - c. Facility operator; and
  - d. Property owner;
- (4) A description of the activity(s) for which approval is being sought, including as applicable:
- a. The type(s) of waste management activities to be undertaken at the facility;
  - b. The quantity and type(s) of waste to be received by the facility;
  - c. The quantity and type(s) of waste to be stored at the facility;
  - d. The quantity and type(s) of waste to be disposed at the facility;
  - e. The facility service area;
  - f. The facility service type;
  - g. The facility life expectancy;
  - h. Other information required to accurately describe the scope and nature of the proposed activity(s); and
  - i. The estimated date of facility construction and operation;
- (5) Identification of the locally accessible place where the application will be available for public review;
- (6) Name, title, mailing address and telephone number of the individual associated with the applicant and available to respond to inquiries during the application review process;
- (7) Name, title, mailing address and telephone number of the agency official or employee who may be contacted regarding the application, which name and information shall be provided to the applicant by the department upon request at the time the applicant prepares the notice;
- (8) Description of the application processing provisions as specified by the solid waste rules. The description shall be detailed sufficiently as to inform the notice recipient of the basic process steps and schedule. An application process flow chart, as provided by the

department upon request, shall suffice;

(9) If the application is for approval to transfer a permit, a statement that the department will accept written comments from the abutters for a period of 30 days following the date the application is filed; and

(10) If the application includes a request for a waiver to any rule, a statement so indicating and specifically citing the rule(s).

Env-Sw 303.06 Additional Filing Requirements.

(a) The applicant for a permit, permit modification, or waiver to a solid waste rule relating to a specific facility, shall comply with the filing requirements in:

(1) Env-Sw 303.07; and

(2) Env-Sw 303.08 through Env-Sw 303.12, if applicable;

(b) Each filing required by (a) above shall be:

(1) Sent by certified mail, return receipt requested; or

(2) Delivered in hand, in which case a signed acknowledgment from the recipient that the notice was received shall be obtained.

(c) Each filing required by (a) above shall be made no later than the date the applicant submits the application to the department, but not earlier than 30 days before that date.

Env-Sw 303.07 Municipality and District.

(a) The applicant for a new permit pursuant to Env-Sw 311 through Env-Sw 314 or a type I, type III and type IV permit modification pursuant to Env-Sw 315 shall provide to each of the following entities a copy of the complete application and a notice of filing containing the information specified in Env-Sw 303.05(e) and, if applicable, (c) below:

(1) The host municipality and other affected municipalities as specified by (b) below, which in the case of:

- a. A town, shall be sent to the town clerk and selectmen;
- b. A city, shall be sent to the city clerk and mayor and city council; and
- c. An unincorporated town or place, shall be sent to the county commissioners; and

(2) The chairperson of the host solid waste management district and other affected districts as specified by (b) below.

(b) If the requested approval directly affects a service provided by a specific municipality(s) or district(s) besides the host municipality and host solid waste management district, for instance an application to expand or reduce the permitted service area of a limited public facility used or to be used by a non-host municipality or district, then the applicant shall also provide a copy of the application and notice of filing to each municipality and district so affected.

(c) If the requested approval involves any activity which is a potential contamination source in a groundwater protection area classified as GAA or GA-1 pursuant to RSA 485-C, the notice sent to the

municipality shall also provide the information required by Env-Sw 303.08.

Env-Sw 303.08 Notice for GAA and GA-1 Groundwater Protection Areas. The applicant for approval for any activity which is a potential contamination source in a groundwater protection area classified as GAA or GA-1 pursuant to RSA 485-C shall provide to the affected local entity as defined by RSA 485-C:2, X:

- (a) A copy of the complete application; and
- (b) A notice of filing containing:
  - (1) The information specified in Env-Sw 303.05(e); and
  - (2) A statement that the department shall suspend action on the application for 30 days following the filing to allow the municipality and local entity to submit written recommendations concerning the proposed project, as provided in RSA 485-C:14.

Env-Sw 303.09 Notices for Areas of Threatened or Endangered Species.

(a) The applicant for any approval relating to a proposed activity located in an area of threatened or endangered species shall provide a copy of the complete application and a notice of filing as specified in (b) below to each of the following entities:

- (1) The New Hampshire department of fish and game; and
- (2) The New Hampshire department of resources and economic development, national heritage inventory program.
- (b) The notice of filing shall contain the following information:
  - (1) The information specified in Env-Sw 303.05(e); and
  - (2) A request for the recipient(s) of the notice to submit to the department, within 30 days following the notice of filing, written comments concerning the adequacy of the application relative to protecting threatened or endangered species pursuant to Env-Sw 1002.03.

Env-Sw 303.10 Notice for Airport Proximity. The applicant for approval to manage putrescible waste within the protective radius of certain airports as specified in Env-Sw 1002.04(c) shall provide the following information to the federal aviation administration (FAA):

- (a) A copy of the complete application;
- (b) A notice of filing containing:
  - (1) The information specified in Env-Sw 303.05(e); and
  - (2) A request for the FAA to submit to the department, within 30 days following the notice of filing, written comments concerning the adequacy of the application relative to satisfying the requirements of Env-Sw 1002.04(c).

Env-Sw 303.11 Notice for Designated River Areas.

- (a) The applicant for approval of a proposed activity affecting any river or segment designated

under RSA 483 shall provide a copy of the complete application and a notice of filing, as specified in (b) below, to:

- (1) The department's rivers coordinator established pursuant to RSA 483:3; and
  - (2) The chairman of the applicable local river management advisory committee established pursuant to RSA 483:8.
- (b) The notice of filing shall contain:
- (1) The information specified in Env-Sw 303.05(e); and
  - (2) A request for the recipient(s) of the notice to submit to the department, within 30 days following the notice of filing, written comments concerning the adequacy of the application relative to satisfying the requirements of RSA 483.

Env-Sw 303.12 Notice to Department of Justice. Applicants required pursuant to Env-Sw 316.02(a) to provide information to the NHDNJ for background investigation purposes shall provide, with the information, a notice of filing containing the information specified in Env-Sw 303.05(e).

Env-Sw 303.13 Compliance Status and History.

- (a) All applicants, except emergency permit applicants, shall submit compliance information with the application, as specified by (b) and (c) below.
- (b) Applicants for a permit-by-notification and applicants for a type III permit modification shall submit compliance certification in accordance with Env-Sw 303.14.
- (c) Applicants for a standard permit, research and development facility permit, waiver, or a type I, II, IV, or V permit modification shall submit either:
  - (1) Compliance certification pursuant to Env-Sw 303.14; or
  - (2) If unable to certify compliance pursuant to Env-Sw 303.14, a compliance report pursuant to Env-Sw 303.15.

Env-Sw 303.14 Compliance Certification.

- (a) The applicant shall certify that each of the statements listed in (b) below are true for each of the following individuals and entities:
  - (1) The applicant;
  - (2) The owner;
  - (3) The facility operator;
  - (4) All individuals and entities holding 10% or more of the applicant's debt or equity;
  - (5) All of the applicant's officers, directors, and partners;
  - (6) All individuals and entities having managerial or supervisory or substantial decision-making authority and responsibility for the management of facility operations or the

activity(s) for which approval is being sought; and

- (7) For a research and development permit, the lead investigator.
- (b) The applicant shall certify that each of the following statements are true:
  - (1) No individual or entity listed in (a) above has been convicted of or plead guilty or no contest to a felony in any state or federal court during the 5 years before the date of the application;
  - (2) No individual or entity listed in (a) above has been convicted of or plead guilty or no contest to a misdemeanor for a violation of environmental statutes or rules in any state or federal court during the 5 years before the date of the application;
  - (3) No individual or entity listed in (a) above has owned or operated any hazardous or solid waste facility which has been the subject of an administrative or judicial enforcement action for a violation of environmental statutes or rules during the 5 years before the date of the application;
  - (4) No individual or entity listed in (a) above has been the subject of any administrative or judicial enforcement action for a violation of environmental statutes and rules during the 5 years before the date of the application;
  - (5) All hazardous and solid waste facilities owned or operated in New Hampshire by any individual or entity listed in (a) above are in compliance with either:
    - a. All applicable environmental statutes, rules, and department permit requirements; or
    - b. A department approved schedule for achieving compliance therewith;
  - (6) All individuals and entities listed in (a) above are in compliance with all civil and criminal penalty provisions of any outstanding consent agreement, settlement, or court order to which the department is a party;
  - (7) All individuals and entities listed in (a) above have paid, or are in compliance with the payment schedule for any administrative fine assessed by the department; and
  - (8) All individuals and entities listed in (a) above are in compliance with all terms and conditions under every administrative order, court order or settlement agreement relating to programs implemented by the department.

#### Env-Sw 303.15 Compliance Report

- (a) Applicants unable to certify compliance pursuant to Env-Sw 303.14 shall submit a compliance report as specified by (b) below.
- (b) The compliance report shall include:
  - (1) A complete explanation of the circumstances which cause any statement in Env-Sw 303.14(b)(1) through (b)(8) to be untrue;
  - (2) For each circumstance which causes a statement in Env-Sw 303.14(b)(1) through (b)(8)

to be untrue, an explanation as to why the department should not find it to be grounds for denying the requested approval pursuant to the provisions of RSA 149-M:9,IX or X; and

- (3) For each circumstance which causes a statement in Env-Sw 303.14(b)(5) through (b)(8) to be untrue, a plan and schedule by which the applicant proposes to achieve full compliance.

#### PART Env-Sw 304 APPLICATION REVIEW

Env-Sw 304.01 Applicability. The rules in this part shall apply to all persons filing applications for the following approvals:

- (a) New permits pursuant to Env-Sw 311 through Env-Sw 314;
- (b) Modification of existing permits, pursuant to Env-Sw 315, including permit transfer and permit renewal applications; and
- (c) Waivers of any requirement of the solid waste rules, pursuant to Env-Sw 202.

#### Env-Sw 304.02 Application Receipt.

- (a) Upon receipt of an application, the department shall determine whether the application filing requirements in Env-Sw 303 have been met.
- (b) Applications filed contrary to Env-Sw 303 shall not be accepted for processing.
- (c) Except as provided in (d) below, an application filed contrary to Env-Sw 303 shall be held by the department while the applicant is notified of the deficiency and given an opportunity to correct the deficiency. If the applicant fails to correct the deficiency within 10 working days or within a mutually agreed time, the department shall return the application as filed, with a written explanation as to the reason(s) for returning the application.
- (d) An application for a permit-by-notification pursuant to Env-Sw 311 or for a type III permit modification pursuant to Env-Sw 315, if filed contrary to Env-Sw 303, shall not be held as described in (c) above and shall be denied in accordance with Env-Sw 305.03(c) and (d).

#### Env-Sw 304.03 Application Completeness Determination.

- (a) Within 60 days after the date an application is filed in accordance with Env-Sw 303, the department shall determine that the application is complete if the application satisfies the content and format requirements specified by the solid waste rules for the type of application filed.
- (b) If the applicant submits any information to complete or amend the application between the date of initial filing and the date the department determines the application is complete, the 60-day review time shall be measured from the date of latest submittal.
- (c) If the application is incomplete, the provisions in Env-Sw 304.04 and Env-Sw 304.05 shall apply.
- (d) If the application is complete, the provisions of Env-Sw 304.06 shall apply.
- (e) Notwithstanding any other provision of this part, the department shall suspend the processing of any application when required by other provisions of law, including RSA 485-C:14. No portion of the suspension time shall be included in computing the time limits for processing the application.

(f) The department shall not determine that an application is complete until all disclosure forms required pursuant to Env-Sw 316 have been filed by the applicant with the NHDNJ.

Env-Sw 304.04 Incomplete Applications.

(a) Except as provided in (c) through (f) below, if an application is determined to be incomplete, the department shall provide written notice to the applicant wherein:

- (1) The applicant, type of application and all documents that constitute the incomplete application shall be identified;
- (2) The deficiencies shall be identified;
- (3) Instructions shall be provided for completing the application, including the name, title, mailing address and telephone number of the agency official or employee who may be contacted regarding the application; and
- (4) The applicant shall be alerted to the application dormancy provisions specified in Env-Sw 304.05(d).

(b) A copy of the notice of incompleteness shall be sent by the department to all persons and entities to whom the applicant was required to provide a copy of the initial application pursuant to Env-Sw 303.

(c) If an incomplete application provides information sufficient for the department to determine that the proposed activity does not meet the requirements of the solid waste rules and requires substantial revision to meet said requirements, or that any other provision for denial exists as provided in Env-Sw 305, the department shall deny the requested approval and send written notice thereof in accordance with Env-Sw 305, in lieu of deeming the application incomplete.

(d) Applications for permits-by-notification pursuant to Env-Sw 311 and type III permit modifications pursuant to Env-Sw 315, if incomplete upon initial submittal, shall be denied pursuant to Env-Sw 305.03(c) through (e).

(e) The department shall notify the applicant by telephone in lieu of providing a written notice of incompleteness if:

- (1) The missing information is incidental to the substance of the application, such as missing certified mail receipts or missing pre-addressed envelopes;
- (2) The anticipated time required of the applicant to correct the deficiency is less than the anticipated time required of the department to notify the applicant in writing; and
- (3) The department is able to contact the applicant by telephone.

(f) If the department provides notice of incompleteness pursuant to (e) above, the department shall specify in the verbal notice:

- (1) A reasonable time period for correcting the deficiency, after which time written notice will be sent by the department in accordance with (a) and (b) above, if no response by the applicant is received by the department; and

(2) That the applicant is required to also send a copy of the response, with a cover letter stating the reason for providing the additional information, to all persons and entities identified in Env-Sw 303 to whom the applicant was required to provide a copy of the initial application.

(g) Upon notifying an applicant that the application is incomplete, the department shall suspend further processing of the application pending receipt of the additional information requested.

(h) No portion of the time between the date a notice of incompleteness is provided and the date the applicant responds shall be included in computing the time limits for processing the application.

Env-Sw 304.05 Completing an Incomplete Application.

(a) Information submitted to the department by an applicant to complete an incomplete application shall be filed in accordance with Env-Sw 303 and, if applicable, (b) below.

(b) The applicant shall:

(1) Provide a copy of all information submitted to complete an incomplete application to each person and entity identified in Env-Sw 303 to whom the applicant was required to provide a copy of the initial application; and

(2) Provide to the department a written and signed statement attesting to the same.

(c) Information received to complete an incomplete application shall be reviewed by the department in accordance with Env-Sw 304.02 and Env-Sw 304.03.

(d) The applicant shall submit all information required to complete an incomplete application within one year from the date the application is initially deemed incomplete. An incomplete application that becomes a dormant application as defined by Env-Sw 102 shall be deemed denied without further action by the department.

Env-Sw 304.06 Complete Applications.

(a) When the department determines that an application is complete, the department shall provide written notice to the applicant wherein:

(1) The applicant, type of application, and all documents that constitute the complete application are identified;

(2) The application is deemed complete;

(3) The dates and arrangements for a public hearing pursuant to Env-Sw 304.08 are identified, if known by the time notice of completeness is given; and

(4) The name, title, mailing address and telephone number of the department official or employee who may be contacted regarding the application is provided.

(b) A copy of the notice of completeness shall be sent by the department to all persons and entities to whom the applicant was required to provide a copy of the application pursuant to Env-Sw 303.

(c) A notice of completeness and a notice of decision pursuant to Env-Sw 305 shall be combined, if a public hearing will not be held and the department has completed a technical review of the application

as required by Env-Sw 304.07.

(d) A permit-by-notification pursuant to Env-Sw 311 and a type III permit modification pursuant to Env-Sw 315 shall be approved in accordance with Env-Sw 305 upon determining the application is complete.

(e) A determination of completeness by the department that is not accompanied by a final decision on the application shall not be construed as a determination of the viability of the requested approval.

#### Env-Sw 304.07 Technical Review.

(a) Except as provided in (c) below, a complete application shall undergo a technical review by the department to determine:

- (1) Whether the proposed activity meets all applicable criteria for issuance as specified in the solid waste rules; or
- (2) Whether a condition for denial, as specified in Env-Sw 305, exists.

(b) During the technical review process, the department shall consider all information received from the following sources, as applicable:

- (1) The applicant;
- (2) The abutters, host municipality, host solid waste management district and other affected entities responding to notification given by the applicant pursuant to Env-Sw 303;
- (3) Persons participating in a public hearing pursuant to Env-Sw 304.08, if held; and
- (4) The NHDNJ pursuant to the provisions of Env-Sw 316.

(c) For applications for a permit-by-notification pursuant to Env-Sw 311 and a type III permit modification pursuant to Env-Sw 315, the department shall not independently assess whether the proposed activity meets all requirements of the solid waste rules and shall rely on the applicant's certification attesting to the same as specified by Env-Sw 311 and Env-Sw 315.

#### Env-Sw 304.08 Public Hearing.

(a) A public hearing shall be required for all permit applications and applications for permit modification, except as provided by (b) below.

(b) Pursuant to RSA 149-M:9, a public hearing shall not be required, except as noted in (d) below, for applications to approve a facility or activity expected to have an insignificant effect on environmental quality, as specified in (c) below.

(c) Facilities and activities authorized by the following types of approvals shall be deemed to have an insignificant effect on environmental quality:

- (1) Permits-by-notification pursuant to Env-Sw 407, Env-Sw 507, Env-Sw 607, and Env-Sw 707;
- (2) Emergency permits;

- (3) Research and development project permits;
  - (4) Standard permits for existing facilities operating in compliance with the solid waste rules under the provisions of a temporary permit;
  - (5) Standard permits for limited public collection, storage and transfer facilities;
  - (6) Type I-B, type II, type III, type IV and type V permit modifications pursuant to Env-Sw 315;
  - (7) Construction approvals pursuant to Env-Sw 1100, including approvals to construct landfill capping systems; and
  - (8) Operating approvals pursuant to Env-Sw 1100.
- (d) Pursuant to RSA 149-M:11, IV(a), a public hearing shall be required for an application:
- (1) To establish a new facility accommodating greater than 30 tons of waste per day, on average; and
  - (2) To increase the capacity of an existing facility from less than to greater than 30 tons per day, on average.
- (e) The department shall provide notice of the public hearing as specified in (f) through (h) below to the public, the applicant, the host municipality, the host solid waste management district, and other affected entities excluding abutters receiving notice pursuant to (i) below.
- (f) Notice to the public shall be by publication in a newspaper of general circulation in the host municipality and host solid waste management district.
- (g) Notice to the applicant, host municipality, host solid waste management district and other affected entities, excluding abutters receiving notice pursuant to (i) below, shall be provided in writing and sent by first class mail.
- (h) The notice of public hearing shall:
- (1) Identify the:
    - a. Applicant by name and mailing address;
    - b. Type of application;
    - c. Nature of the proposal; and
    - d. Facility name, location by street and municipality, type and, if applicable, permit number;
  - (2) State the date, time and location of the hearing;
  - (3) Identify the location(s) where a copy of the complete application is available for public review;

- (4) State that testimony may be submitted in writing to the department at any time before the close of the hearing notice period in lieu of attending or providing oral testimony at the public hearing;
  - (5) Request disabled persons planning to attend the hearing and requiring special assistance under the provisions of the Americans with Disabilities Act to contact the department in advance of the hearing to identify the type of assistance required; and
  - (6) Provide the name, title, mailing address and telephone number of the department official or employee who may be contacted regarding the application and hearing, and to whom written public hearing testimony may be submitted.
- (i) Pursuant to RSA 149-M:9, VIII, the applicant shall provide a notice of public hearing, as specified in (h) above, to all abutters by certified mail, return receipt requested. If the applicant or the facility site owner owns any abutting parcel of land, the notice of hearing shall be sent to the owner(s) of the next parcel(s) not owned by the applicant or facility site owner.
- (j) The applicant shall make a copy of the complete application available at a locally accessible place for public review from the date the hearing notice is first provided through the date the hearing record is closed by the department.
- (k) Upon instruction by the department, the applicant shall make arrangements for locating the public hearing as specified by (l) below.
- (l) The public hearing shall be held at a location that:
- (1) Is within the host municipality or, in the case of an unincorporated town or unorganized place, in the host county;
  - (2) Provides access for disabled persons in conformance with Title II of the Americans with Disabilities Act as provided in public law 101-336;
  - (3) Provides adequate seating and parking for the number of persons anticipated to attend; and
  - (4) Provides a public address system as appropriate for the size of the hearing room and the anticipated number of attendees.
- (m) Pursuant to Env-Sw 310, the applicant shall pay the cost, if any, for:
- (1) Hearing notice publication;
  - (2) Rental of the hearing room;
  - (3) Hiring security personnel for crowd control if, based on the nature of the application and indications of public interest, the department or the host municipality determines crowd control measures will be required to protect the public health and safety; and
  - (4) Hiring interpreters for disabled persons or providing other such services when required to comply with the Americans with Disabilities Act.
- (n) The department shall conduct the hearing in accordance with the provisions of Env-C 200 applicable to non-adjudicative hearings.

## PART Env-Sw 305 APPLICATION DECISIONS

Env-Sw 305.01 Applicability. The rules in this part shall apply to all applications reviewed in accordance with Env-Sw 304.

Env-Sw 305.02 Decision on Application.

(a) Following completion of the review procedures in Env-Sw 304 and within either 120 days following the receipt date of the complete application or 30 days following a public hearing held pursuant to Env-Sw 304.08(d) and RSA 149-M:11, IV(a), whichever occurs latest, the department shall either issue or deny the requested approval, in writing.

(b) A decision for denial shall be made pursuant to the provisions of Env-Sw 305.03.

(c) A decision for issuance shall be made pursuant to:

- (1) Env-Sw 305.04;
- (2) Env-Sw 305.05, if for a permit; and
- (3) Env-Sw 305.06, if for a permit modification.

(d) The applicant and all persons and entities to whom the applicant was required to provide a copy of the application pursuant to Env-Sw 303 shall be notified of the decision in writing by the department.

(e) Pursuant to RSA 149-M:9, XII(b), the final decision on an application for a type IV permit modification to transfer a permit shall not be made until at least 30 days after the public hearing, if held.

Env-Sw 305.03 Denial of a Requested Approval.

(a) The written decision for denial shall:

- (1) Identify the applicant, type of application and all documents that constitute the complete application or, if the decision for denial is made without a complete application pursuant to Env-Sw 304.04(c), all documents submitted by the applicant that form the basis of the decision;
- (2) State the specific reason(s) for the denial based on (b) below;
- (3) Identify the applicable provisions for appeal pursuant to RSA 21-O:9, V;
- (4) Provide the name, title, mailing address and telephone number of the department official or employee who may be contacted regarding the decision; and
- (5) Be signed by the director or a person so authorized by the director.

(b) A requested approval shall be denied if one or more of the following conditions applies:

- (1) The proposed activity does not meet the applicable requirements of RSA 149-M and the solid waste rules;

- (2) The application provides insufficient or ambiguous information that precludes a determination that the proposed approval will comply with RSA 149-M and the applicable requirements of the solid waste rules, and the deficiencies are so substantial as to not be remedied by subjecting the approval to compensating terms and conditions;
  - (3) The department determines that the applicant meets the criteria for denial pursuant to RSA 149-M:9, IX;
  - (4) The applicant has not demonstrated its legal right to occupy the subject property;
  - (5) As required by RSA 483:12-a, the department is notified by the rivers coordinator that a proposed activity violates a protection measure under RSA 483:9, RSA 483:9-a, or RSA 483:9-b;
  - (6) The application becomes a dormant application;
  - (7) The application is for a permit-by-notification or type III permit modification and the applicant is unable to provide compliance certification pursuant to Env-Sw 303.14; or
  - (8) The application meets any other provision for denial as specified in the solid waste rules for the particular type of application reviewed.
- (c) An application for a permit-by-notification pursuant to Env-Sw 311 or a type III permit modification pursuant to Env-Sw 315 shall be denied based on (b)(2) above if the application is filed contrary to the requirements in Env-Sw 303 or is not complete upon initial filing.
- (d) In conformance with (a) above, notice for denial pursuant to (c) above shall be made by sending to the applicant, host municipality and host solid waste district a copy of the notification form which:
- (1) Bears the department's dated receipt stamp;
  - (2) Is clearly marked "incomplete/denied";
  - (3) Is marked to identify the deficiencies;
  - (4) Is imprinted with the information required by (a)(3) above;
  - (5) Is signed and dated by the director or person so authorized by the director; and
  - (6) Is stapled to a business card bearing the information required by (a)(4) above.
- (e) Denial of a permit-by-notification or a type III permit modification due to improperly filing or completing the application upon initial filing shall not preclude the applicant from later obtaining an approval by properly submitting a complete notification.

Env-Sw 305.04 Issuance of Any Requested Approval.

- (a) The written decision for any approval shall:
  - (1) Identify the person to whom the approval is granted;

- (2) Identify the type of approval and authority for issuance;
- (3) Identify all documents that constitute the complete application;
- (4) Specify the terms and conditions under which the approved activity is authorized, including:
  - a. The date the approval will be effective;
  - b. The expiration date, if any, and provisions for renewal as applicable; and
  - c. The information specified in:
    - 1. Env-Sw 305.05, if a facility permit; and
    - 2. Env-Sw 305.06, if a facility permit modification; and
- (5) Be signed and dated by the director or a person so authorized by the director.

(b) An approval granted by the department shall not affect the applicant's obligation to obtain all requisite federal, state or local permits, licenses or approvals, or to comply with all other applicable federal, state, district or local permits, ordinances, laws or approvals or conditions pertaining to the approved activity.

Env-Sw 305.05 Issuance of Permits.

- (a) A standard permit, emergency permit, or research and development facility permit shall:
  - (1) Be issued in conformance with Env-Sw 305.04;
  - (2) Specify the functional classification of the facility pursuant to Env-Sw 302;
  - (3) Specify that the facility must be constructed, operated and closed in accordance with RSA 149-M and the solid waste rules;
  - (4) Identify all plans approved by the department as part of the permit and incorporate said plans by reference into the terms and conditions of the permit; and
  - (5) Include terms and conditions, based on the information provided in the permit application and in conformance with the applicable facility requirements in Env-Sw 400 through Env-Sw 1200 and Env-Sw 1400, for the following:
    - a. Facility location;
    - b. Facility design;
    - c. Facility construction;
    - d. Facility operation, including:
      - 1. Operating restrictions including:
        - i. Facility function;

- ii. Capacity;
  - iii. Service type;
  - iv. Service area; and
  - v. Authorized and prohibited waste types;
- 2. Public benefit requirements pursuant to RSA 149-M:11;
  - 3. Maintenance and monitoring requirements; and
  - 4. Reporting requirements;
- e. Financial assurance for guaranteeing the cost of facility closure; and
  - f. Facility closure, including post-closure requirements.

(b) Except for a permit-by-notification, emergency permit not exempt pursuant to Env-Sw 313.02(b) or research and development permit not exempt pursuant to Env-Sw 312.02(b), a permit issued on the basis of a permit application containing preliminary as opposed to final plans for facility design and construction, operation, financial assurance or closure, shall include terms and conditions requiring the permittee to obtain final plan approval pursuant to the provisions of Env-Sw 315 for a type II permit modification.

(c) A standard permit issued for a facility that will be constructed in phases over time, such as a landfill, shall specify terms and conditions requiring the permittee to obtain final design plan approval for construction on a phase by phase basis pursuant to the provisions in Env-Sw 315 for a type II permit modification.

(d) Pursuant to the provisions of RSA 149-M:9, XI, a facility permit shall be continuous in duration, extending from the date of signature through any required post-closure period, except as provided by (e) below and Env-Sw 306.

(e) Pursuant to the provisions of RSA 149-M:11, XI, a permit shall expire as follows:

(1) A standard permit issued pursuant to Env-Sw 314 for a new facility shall expire 2 years from the date of issuance if the permittee has not obtained approval to construct the facility pursuant to the provisions of Env-Sw 1104, unless the permit specifically exempts the facility from the 2 year construction deadline on the basis of a demonstration of public benefit that accounted for a later construction date;

(2) A permit-by-notification issued pursuant to Env-Sw 311 shall expire:

- a. For a facility with an active life longer than 90 days, one year from the date of issuance if facility construction has not commenced; and
- b. For a facility with an active life of 90 days or less, 90 days from the date the facility will commence operations, as declared in the application;

(3) An emergency permit issued pursuant to Env-Sw 313 shall expire following completion of the emergency response actions and facility closure requirements identified in

the permit; and

(4) A research and development facility permit shall expire following completion of the studies and facility closure requirements identified in the permit.

(f) A permit-by-notification pursuant to Env-Sw 311 shall be issued in conformance with Env-Sw 305.04 by:

(1) Having the notification form imprinted and prepared to include all of the information required by Env-Sw 305.04(a)(1) through (a)(4);

(2) Marking the notification form “approved”;

(3) Affixing the department’s dated receipt stamp to the form; and

(4) Having the form signed and dated by the director or a person so authorized by the director.

(g) A form processed as specified in (f) above shall constitute the written permit for a permit-by-notification facility.

(h) Any proposed change to the location, design, operation or closure of a facility as permitted by the department shall require approval pursuant to Env-Sw 315 and Env-Sw 305.06, except as noted in (i) below.

(i) A permit-by-notification issued pursuant to Env-Sw 311 shall not be modified, except if the modification is a type III or type V modification pursuant to Env-Sw 315 or a permit transfer pursuant to Env-Sw 1202.06(d). Any other modification of a permit-by-notification facility shall be authorized only by issuance of a new permit-by-notification for the modified facility.

Env-Sw 305.06 Issuance of Permit Modifications.

(a) A facility permit modification granted pursuant to Env-Sw 315 shall:

(1) Be issued in conformance with Env-Sw 305.04;

(2) Identify the permit which is being modified, including the facility:

- a. Name;
- b. Location; and
- c. Permit number;

(3) Stipulate how the permit is being modified, including citation of each condition of the permit that is modified;

(4) Identify all plans approved by the department as part of the modification and incorporate such plans by reference into the terms and conditions of the permit; and

(5) Be signed and dated by the director or a person so authorized by the director.

(b) In conformance with (a) above, a type III and type V permit modification granted pursuant to Env-Sw 315 shall be issued by:

- (1) Having the form imprinted and prepared to include all of the information specified by Env-Sw 305.04;
  - (2) Marking the notification form “approved”;
  - (3) Affixing the department’s dated receipt stamp to the form; and
  - (4) Having the form signed and dated by the director or person so authorized by the director.
- (c) A form, processed as specified in (b) above, shall constitute the approved permit modification for the permit-by-notification facility.
- (d) Upon receipt of an approved permit modification, the permittee shall attach the approval to the permit and maintain a copy thereof as part of the facility operating records.
- (e) In the case of a type V permit modification issued pursuant to Env-Sw 315 for the purpose of recording a name change, the approval shall expire unless the permittee:
- (1) Publishes a notice of the name change in a newspaper of general circulation in the host municipality and host solid waste district within 10 days after the effective date of the modification; and
  - (2) Sends a copy of the published notice to the department within 10 days following publication.

#### PART Env-Sw 306 REVOCATION AND SUSPENSION

Env-Sw 306.01 Purpose. The purpose of the rules in this part is to establish procedures by which the department shall revoke, suspend or modify a permit issued pursuant to RSA 149-M and the solid waste rules.

Env-Sw 306.02 Applicability.

- (a) The rules in this part shall apply to actions by the department to revoke, suspend or modify a permit issued pursuant to RSA 149-M and the solid waste rules.
- (b) As used in this part:
- (1) “Permit” means any permit, license, registration, or other approval issued by the department under RSA 149-M and the solid waste rules; and
  - (2) “Permittee” means the person to whom the permit was issued.

Env-Sw 306.03 Procedure.

- (a) Revocation, suspension or modification of a permit by the department shall proceed in accordance with RSA 541-A:30 and this part.
- (b) If, pursuant to investigation or inspection in accordance with Env-Sw 2000, the department determines there may be good cause for revocation, suspension or modification, as specified in Env-Sw 306.05, the permittee shall be so notified in writing by certified mail, return receipt requested, and provided an opportunity for an adjudicative hearing.

(c) Written notice provided pursuant to (b) above, shall:

(1) Identify:

- a. The facility by name, location and permit number;
- b. The action(s) the department proposes to take;
- c. The reason(s) for the proposed action(s);
- d. The department's authority for taking such action(s);
- e. The date, time and place for an adjudicative hearing; and
- f. The name, title, mailing address and telephone of the department official or employee who may be contacted regarding the notice;

(2) State that:

- a. The permittee may waive the right to an adjudicative hearing by so notifying the department in writing within 5 days after the notice receipt date;
- b. If the permittee either waives the right to a hearing or fails to appear at the hearing, the proposed action shall become immediately effective; and
- c. Written notice of the department's final action shall be provided by certified mail, return receipt requested;

(3) Be dated and signed by the director or a person so authorized by the director; and

(4) Be sent by first class mail to the host municipality and host solid waste management district.

(d) The adjudicative hearing shall proceed in accordance with the provisions of Env-C 200 applicable to adjudicative proceedings.

Env-Sw 306.04 Decision.

(a) A permit shall be revoked if the department determines, following the procedures in Env-Sw 306.03, that:

- (1) Good cause as provided in Env-Sw 306.05 exists; and
- (2) There are no circumstances by which the permittee can correct or eliminate the underlying problem.

(b) A permit shall be suspended if the department determines, following the procedures in Env-Sw 306.03, that:

- (1) Good cause as provided in Env-Sw 306.05 exists; and
- (2) Given time to do so, the permittee can correct the underlying problem and thereafter

resume facility operations in full compliance with the solid waste rules.

(c) A permit shall be modified by the department if the department determines, following the procedures in Env-Sw 306.03, that:

- (1) Good cause as provided in Env-Sw 306.05 exists; and
- (2) The underlying problem can be corrected or eliminated by changing a condition(s) of the permit.

Env-Sw 306.05 Good Cause. The following shall provide good cause to revoke, suspend or modify a permit:

- (a) A criteria for revocation or suspension as provided in RSA 149-M:12 exists;
- (b) Issuance of the permit was based on false or misleading information; or
- (c) The permittee or the facility meets any other criteria for permit denial as specified in Env-Sw 305.

## PART Env-Sw 307 STATUS OF EXISTING PERMITS

### Env-Sw 307.01 Purpose.

- (a) The purpose of the rules in this part is to:
  - (1) Classify existing permits according to the system of permits specified in Env-Sw 302 so as to clearly identify how the existing permits will be administered by the department; and
  - (2) Specify procedures by which the department will reissue an existing permit, if requested by the permittee, for the sole purpose of rewording the terms and conditions to clarify but not modify facility requirements under RSA 149-M, the solid waste rules, and the permit.

- (b) There is no intent by the rules in this part to modify the conditions of any existing permit.

Env-Sw 307.02 Applicability. The rules in this part shall apply to those permits granted under the authority of RSA 149-M prior to October 29, 1997 that remain in effect.

### Env-Sw 307.03 Status of Permits Issued Prior to July 1, 1991.

(a) A permit issued pursuant to RSA 149-M prior to July 1, 1991 shall be titled and administratively classified as a “standard permit” under the solid waste rules, except as provided in Env-Sw 307.10.

(b) The terms and conditions of the permit shall remain unchanged until such time as the permit is modified, retired, or otherwise terminated in accordance with the rules in this chapter.

### Env-Sw 307.04 Status of Permits Issued Between June 30, 1991 and October 29, 1997.

(a) Each of the following types of permits issued pursuant to RSA 149-M between June 30, 1991 and October 29, 1997 shall be titled and administratively classified as a “standard permit” under the solid

waste rules, except as provided in Env-Sw 307.10:

- (1) Standard permit;
- (2) Limited permit for existing facility; and
- (3) Limited permit for new facility.

(b) A research and development permit issued pursuant to RSA 149-M between June 30, 1991 and October 29, 1997 shall remain titled and administratively classified as a “research and development permit” except as provided in Env-Sw 307.10.

(c) For each permit identified in (a) or (b) above, the terms and conditions of the permit shall remain unchanged until such time as the permit is modified, retired, or otherwise terminated in accordance with the rules in this chapter.

#### Env-Sw 307.05 Status of Temporary Permits.

(a) A temporary permit issued pursuant to RSA 149-M between June 30, 1991 and October 29, 1997 shall remain titled and administratively classified as a “temporary permit” under the solid waste rules, except as provided in Env-Sw 307.10.

(b) Temporary permits shall be administered as specified in Env-Sw 307.06 through Env-Sw 307.09.

#### Env-Sw 307.06 Administration of Temporary Permits.

(a) Temporary permits shall be subject to call by the department pursuant to the provisions of Env-Sw 307.07.

(b) A facility which ceased operations prior to issuance of the temporary permit or which ceases to operate after issuance of the temporary permit shall not resume operations under the provisions of the temporary permit, except pursuant to a notice of temporary cessation as provided in Env-Sw 1106.05.

(c) Until required to close pursuant to Env-Sw 307.08 or Env-Sw 307.09, an operating facility with a temporary permit may continue operating under its temporary permit provided that the facility complies with the terms and conditions of the temporary permit, Env-Sw 1000, Env-Sw 1105, and the provisions of Env-Sw 405, Env-Sw 505, Env-Sw 605, Env-Sw 705, or Env-Sw 806 as applicable based on the functional classification of the facility, except:

- (1) There shall be no requirement to provide a written operating plan; and
- (2) The operating requirements applicable to liners and leachate collection and removal systems shall not apply to unlined landfills.

#### Env-Sw 307.07 Call of Temporary Permits.

(a) Temporary permits for the following facilities were called on October 29, 1997:

- (1) Inactive facilities; and
- (2) Active facilities unable to certify compliance pursuant to Env-Sw 307.06.

(b) The department shall determine the priority for call of all temporary permits not called on October 29, 1997, as follows:

(1) Priority shall be assigned to landfills consistent with the criteria provided in RSA 149-M:49; and

(2) Priority shall be assigned to non-landfill facilities based on the hierarchy established in RSA 149-M:3, with highest priority given to facilities lowest in the hierarchy.

(c) The department shall call temporary permits in order of the facility's assigned priority by notifying the permittee in writing.

(d) Written notice provided pursuant to (b) above shall instruct the permittee to comply with Env-Sw 307.08 or Env-Sw 307.09, as applicable.

Env-Sw 307.08 Landfills with Temporary Permits.

(a) A landfill holding a temporary permit shall close in accordance with Env-Sw 1006, Env-Sw 1106, and Env-Sw 807.

(b) Following call of a temporary landfill permit, the permittee shall:

(1) Within 60 days of the date of call, submit to the department for approval a schedule for developing and implementing a facility closure plan that meets the requirements of (a) above;

(2) By the date specified in the schedule approved by the department pursuant to (1) above, submit a facility closure plan as specified in Env-Sw 1106; and

(3) Implement facility closure in accordance with the closure plan and schedule approved by the department pursuant to Env-Sw 1106.

(c) A temporary landfill permit shall remain in effect for the duration of the required closure and post-closure period.

Env-Sw 307.09 Non-Landfill Facilities with Temporary Permits.

(a) Following call of a temporary permit for an inactive non-landfill facility pursuant to Env-Sw 307.07(a)(1), the permittee shall either:

(1) Implement facility closure in accordance with the requirements of Env-Sw 1106; or

(2) Submit documentation demonstrating that the facility is already closed in accordance with the requirements of Env-Sw 1106.

(b) Following call of a temporary permit for an active non-landfill facility pursuant to Env-Sw 307.07(b)(2) or (c), the permittee shall either:

(1) Within one year of the date of call, file an application for a standard permit pursuant to Env-Sw 314 or a permit-by-notification pursuant to Env-Sw 311; or

(2) Implement facility closure in accordance with the requirements of Env-Sw 1106.

(c) If, pursuant to Env-Sw 307.07(a)(2), the permit is called due to inability to certify compliance

pursuant to Env-Sw 307.06, the facility shall either:

- (1) Cease operations and implement facility closure in accordance with the requirements of Env-Sw 1106; or
  - (2) Obtain a waiver pursuant to Env-Sw 202 to continue operating subject to implementing a plan to achieve full compliance within one year of the date of permit call and pending final action on a permit application filed pursuant to (b)(1) above.
- (d) An active non-landfill facility shall be required to implement closure in accordance with the requirements of Env-Sw 1106 if:
- (1) It fails to complete in a timely fashion any permit application filed pursuant to (b)(1) above;
  - (2) The department denies the permit application; or
  - (3) A provision for closure pursuant to Env-Sw 1006 exists.
- (e) A temporary permit for a non-landfill facility shall be retired:
- (1) Upon issuance of a standard permit or permit-by-notification for the same facility; or
  - (2) Upon written notice thereof to the permittee by the department, following full closure of the facility and the end of any required post-closure monitoring and maintenance period.

Env-Sw 307.10 Exceptions to Designated Permit Titles and Classifications.

- (a) Any person holding a permit identified in Env-Sw 307.02 through Env-Sw 307.05 and believing that the activity(s) authorized in the permit are the same as an activity(s) now exempt from a permit pursuant to Env-Sw 101.03, Env-Sw 302.03, Env-Sw 408, Env-Sw 508, Env-Sw 608, Env-Sw 708, Env-Sw 808, or Env-Sw 1708, may request the department to review the terms and conditions of the permit to determine whether the permit shall be retired in favor of the comparable permit exemption.
- (b) Within 120 days of receipt of a request pursuant to (a) above, the department shall review the terms and conditions of the permit to determine whether the facility meets the requirements of a permit-exempt facility.
- (c) If the department determines that the facility meets the requirements of a permit-exempt facility, the original permit shall be retired.
- (d) The department shall notify the permittee in writing of its decision within 30 days of making the decision.

Env-Sw 307.11 Provisions for Reissuing an Existing Permit.

- (a) A permittee may request the department to reissue an existing permit for the sole purpose of rewording the terms and conditions to clarify but not modify requirements applicable to the facility under RSA 149-M, the solid waste rules and the permit.
- (b) A request pursuant to (a) above shall be made in writing, to include:
  - (1) Facility identification, including name, location by street and municipality, and permit

number;

(2) Permittee identification, including name, mailing address and telephone number;

(3) A statement requesting the department to initiate action to reissue the permit pursuant to the rules in this section;

(4) Date of the request; and

(5) Signature of the permittee.

(c) Within 120 days of receipt of a request as specified by (b) above, the department shall review the terms and conditions of the permit to determine whether reissuance of the permit will have an administrative benefit to both the department and the permittee, based on the criteria provided by (d) below.

(d) There shall be an administrative benefit to reissuing a permit if:

(1) The permit was originally issued by the predecessor agency to the department, ~~as~~ the division of public health services; or

(2) The terms and conditions of the permit include references to rules, statutes or regulations either no longer in effect or amended to such an extent as to make:

a. The legal meaning of the terms and conditions unclear without knowing the history of the cited rules, statutes or regulations; or

b. A plain reading of the terms and conditions to be an incorrect legal meaning.

(e) If there is an administrative benefit to reissuing the permit, the department shall prepare and send a preliminary draft of the rewritten permit to the permittee for review and comment within 60 days of determining that there is an administrative benefit.

(f) Within 60 days of receipt of comments by the permittee on the preliminary draft, the department shall prepare and send a proposed final draft of the rewritten permit to the permittee for review and response pursuant to (g) below.

(g) Following receipt of a proposed final draft of the rewritten permit, the permittee shall notify the department within 60 days as to which of the following actions shall be taken:

(1) Because the permittee agrees that the proposed final draft permit meets the objective for reissuance, namely clarification, and does not constitute a modification of the permit as shall otherwise proceed in accordance with Env-Sw 306, the department shall proceed to reissue the permit in the form presented by the proposed final draft; or

(2) Because the permittee disagrees that the proposed final draft permit meets the objective for reissuance, namely clarification, or believes the proposed final draft permit constitutes a modification of the permit under RSA 541-A, the permittee shall:

a. Withdraw the request for reissuance; or

b. Agree to proceed with reissuance in accordance with the modification procedures specified in Env-Sw 306, including the opportunity for an adjudicative hearing

pursuant to RSA 541-A:30.

(h) The department shall proceed in accordance with the permittee's response provided pursuant to (g) above. If the permittee does not respond within the specified time, the department shall notify the permittee that the existing permit remains in effect.

PART Env-Sw 308 RESERVED

PART Env-Sw 309 REGISTRATIONS

Env-Sw 309.01 Purpose. The purpose of registration of landfills that stopped receiving waste before July 10, 1981 is to provide the department with:

- (a) Documentation demonstrating that the criteria for exemption in Env-Sw 101.04 applies; and
- (b) Information to identify whether an exempt landfill poses a potential threat to human health and the environment which requires action under the provisions of other state or federal regulations.

Env-Sw 309.02 Applicability. The rules in this part shall apply to all persons owning landfills, including asbestos waste sites, which stopped receiving waste before July 10, 1981 and claiming exemption from the solid waste rules pursuant to Env-Sw 101.04.

Env-Sw 309.03 Registration Requirement.

- (a) Persons identified in Env-Sw 309.02 shall register in accordance with (b) below.
- (b) The following registration information shall be filed with the department in accordance with Env-Sw 303:

- (1) Facility identification:
- (2) Identification of parties;
- (3) If a written permit has been issued by the department for any other activity at the facility or site, the following information for each permit so issued:
  - a. The permittee's name, mailing address and telephone number;
  - b. The permit number;
  - c. The type of permit or description of the activity(s) authorized by the permit; and
  - d. The date of issuance;
- (4) The operating status of the facility, including:
  - a. Whether active or inactive;
  - b. The date the facility commenced operations; and
  - c. The remaining facility life expectancy or the date on which the facility ceased active operation;

- (5) The type(s) of waste management activity(s) conducted at the facility, including:
  - a. Collection;
  - b. Storage;
  - c. Transfer;
  - d. Processing;
  - e. Treatment;
  - f. Landfilling; or
  - g. A combination of a. through f., above;
- (6) Type of service provided by the facility, as defined in Env-Sw 102-104, namely “limited” or “unlimited”;
- (7) The type(s) of wastes handled at the facility;
- (8) Identification of the service area, including a list of all New Hampshire communities and areas outside the state served by facility;
- (9) For inactive landfills, an estimated volume of waste at the facility;
- (10) For inactive landfills, a description of the type and depth of cover material placed over landfilled waste;
- (11) If the facility is active, the days and hours of operation; and
- (12) A report of any environmental assessment done of the facility.

(c) Notification provided to the department in accordance with Env-Sw 315 of the rules adopted under RSA 149-M effective July 1, 1991 shall constitute registration under this part.

Env-Sw 309.04 Registration Processing.

(a) Within 120 days of receipt of registration from the owner of a landfill that stopped receiving waste before July 10, 1981, the department shall:

- (1) Review the information submitted; and
- (2) Notify the facility owner of the requirements of RSA 485 if it determines that the landfill is a known or suspected source of groundwater or surface water contamination.

(b) Within 120 days of receipt of registration from an asbestos waste site that stopped receiving waste before July 10, 1981, the department shall notify the site owner of requirements for site closure and post-closure maintenance in compliance with RSA 147-A, RSA 141-E, Env-Sw 2100, 40 CFR Part 61, 29 CFR Part 1910, and 29 CFR Part 1926.

PART Env-Sw 310 FACILITY APPLICATION FEES

Env-Sw 310.01 Applicability. The rules in this part shall apply to persons filing applications for permits and permit modifications.

Env-Sw 310.02 Standard Permit Application Fees for Facilities Without a Temporary Permit.

(a) The permit application fee (PAF) for a standard permit for a facility without a temporary permit shall be:

- (1) Zero if the facility is scheduled to close; or
- (2) The sum of the minimum base fee (MBF) as specified in (b) below plus the product of a capacity factor (CF) as specified in (c) below multiplied by a lifespan index (LI) as specified in (d) below, plus the cost of completing a background investigation (BI) pursuant to Env-Sw 316, plus the cost of public notice and hearing (PNH) pursuant to Env-Sw 304, as illustrated in the following equation:

$$\text{PAF} = \text{MBF} + (\text{CF})(\text{LI}) + \text{BIF} + \text{PNH}$$

(b) The MBF shall be the largest fee specified in Table 310-I which corresponds to any function encompassed at the facility:

TABLE 310-I  
MBF for Single Function Facilities

Facility Type	Minimum Base Fee (MBF)
Landfill, lined	\$15,000
Landfill, unlined	\$ 5,000
Processing/Treatment	\$ 2,000
Collection/Storage/Transfer	\$ 2,000

(c) The CF shall be determined from Table 310-II based on the design capacity of the facility in tons per day (TPD), as demonstrated in the application:

TABLE 310-II  
CF Based on Facility Capacity

Facility Capacity (TPD)	Capacity Factor
601 or more	\$20,000
301 to 600	\$10,000
121 to 300	\$ 5,000
31 to 120	\$ 2,000
30 or fewer	\$ 1,000

(d) The LI shall be determined from Table 310-III based on the designed active life expectancy of the facility, as demonstrated in the permit application:

TABLE 310-III  
LI Based on Facility Life Expectancy

Facility Life Expectancy	Lifespan Index
more than 10 years	1.0
more than 5, to 10 years	0.8
more than 1, to 5 years	0.4

1 year or less	0.1
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Env-Sw 310.03 Standard Permit Application Fees for Temporary Permit Facilities. The fee for filing a standard permit application for a temporary permit facility shall be \$500.

Env-Sw 310.04 Permit-by-Notification Fees. There shall be no fee for filing an application for a permit-by-notification.

Env-Sw 310.05 Research and Development Facility Permit Fee. The fee for a research and development facility permit application shall be calculated in accordance with the equation given in Env-Sw 310.02 using the following substitute values:

- (a) The MBF shall equal \$1,000; and
- (b) The CF shall be determined from Table 310-II based on the total quantity of waste the project involves instead of the daily capacity of the facility.

Env-Sw 310.06 Emergency Permit Application Fees. There shall be no permit application fee for an emergency permit.

Env-Sw 310.07 Type I Permit Modification Fees.

(a) The fee for filing an application for a type I-A permit modification as specified in Env-Sw 315.02 shall be the greater of the following:

- (1) \$1,500; or
- (2) If the modification will increase the capacity of the facility, the PAF calculated in accordance with Env-Sw 310.02 using the CF in Table 310-II that corresponds to the net increase in permitted facility capacity and the LI in Table 310-III that corresponds to the remaining life of the facility if modified as proposed.

(b) The fee for filing an application for a type I-B permit modification as specified in Env-Sw 315.02 shall be \$100.

Env-Sw 310.08 Type II Permit Modification Fee. There shall be no fee for filing an application for a type II permit modification as specified in Env-Sw 315.02, except as follows:

(a) If the application involves the review of final design plans and specifications for construction of new landfill area other than the initial landfill phase, the fee shall equal the product of the applicable MBF in Table 310-I and the LI in Table 310-III that corresponds to the life expectancy of the area being constructed; and

(b) If the application involves the review of final design plans and specifications for construction of a lined landfill capping system or any portion thereof, the fee shall equal the product of the applicable MBF in Table 310-I and the ratio of the cap area to the total permitted footprint, measured in square feet in plan view.

Env-Sw 310.09 Type III Permit Modification Fee. There shall be no fee for filing an application for a type III modification.

Env-Sw 310.10 Type IV Permit Modification Fee. The fee for filing an application for a type IV modification shall equal \$1,000 plus the cost of completing a background investigation (BIF) pursuant to

Env-Sw 316 plus the cost of public notice and hearing (PNH) pursuant to Env-Sw 304.

Env-Sw 310.11 Type V Permit Modification Fees. There shall be no fee for a type V permit modification.

Env-Sw 310.12 Payment of Permit Application Fees.

(a) Fees shall be paid at the time of filing the application, except for the BIF and PNH portion of the fee which shall be paid upon presentation of an invoice for the actual costs.

(b) Fees shall be non-refundable.

(c) Fees, if paid by check or money order, shall be made payable to "Treasurer, State of NH."

#### PART Env-Sw 311 PERMIT-BY-NOTIFICATION REQUIREMENTS

Env-Sw 311.01 Purpose and Applicability.

(a) The rules in this part specify provisions for obtaining a permit-by-notification.

(b) A permit-by-notification shall apply to facilities identified in Env-Sw 407, Env-Sw 507, Env-Sw 607, and Env-Sw 707.

Env-Sw 311.02 Requirements and Limitations.

(a) A permit-by-notification shall be obtained by filing notification in accordance with this part. The notification shall constitute a permit application for the facility.

(b) A permit-by-notification shall be issued for facilities meeting the following requirements, as certified by the applicant in the application:

(1) Env-Sw 1200;

(2) Env-Sw 1000;

(3) Env-Sw 1100, for facilities having an active life longer than 90 days;

(4) Env-Sw 407, Env-Sw 507, Env-Sw 607, or Env-Sw 707 depending on the type of facility; and

(5) Env-Sw 900, depending on the type of waste managed.

(c) A permit-by-notification facility shall not be transferred to a new owner, except for landfill transfers occurring automatically pursuant to Env-Sw 1202.06(d). In all other cases, a transferred permit-by-notification facility shall, for administrative purposes, be deemed a new facility and the new owner shall obtain a permit as though the facility were new, if operations continue after the property transfers.

Env-Sw 311.03 Application Content and Format. The applicant for a permit-by-notification shall submit the following information in the permit application:

(a) Identification of parties;

(b) Facility identification;

- (c) Facility type, as specified in Env-Sw 407, Env-Sw 507, Env-Sw 607, and Env-Sw 707;
- (d) Dates facility construction and operation are scheduled to commence;
- (e) Active life expectancy of the facility;
- (f) A facility site plan, drafted to scale and referenced to a known fixed point, showing:
  - (1) The location of the facility and the parcel of land upon which the facility is or will be located, including:
    - a. Property boundaries;
    - b. Access points;
    - c. Rights-of-way and/or easements; and
    - d. Areas or features protected or restricted by the applicable siting requirements in Env-Sw 1000 through Env-Sw 1200;
  - (2) All of the following for a facility involving either new construction, or management of waste outside a building, or management of waste inside an existing building where there is the potential for discharge to the outside environment, as by floor drains or the like:
    - a. Above ground structures and utilities;
    - b. Below ground structures and utilities, including:
      - 1. Underground storage tanks;
      - 2. Wells and waterlines;
      - 3. Septic systems and sewer lines; and
      - 4. Power, communication, and fuel lines;
    - c. Surface waters; and
    - d. Wetlands;
  - (3) Show the proposed facility, including:
    - a. Waste handling areas, including areas and devices designated for receipt of waste, inspection of waste, processing or treatment of waste, and hot load isolation areas, as applicable;
    - b. Waste storage areas, including the designated footprint for any stockpiles, areas and devices designated for storage of unprocessed waste, processed waste, processed recyclable materials, waste-derived products, bypass waste and residual waste as applicable; and
    - c. If for a landfill, the vertical and lateral limits of the proposed waste disposal area

and a detail of the cap profile; and

(4) Showing compliance with all required setback distances, by a dimensioned line drawn from the facility to each site feature which is protected by a specified setback requirement in Env-Sw 1000 through Env-Sw 1200, as applicable;

(g) If the facility is located on property subject to enforcement action or within a groundwater management zone, the information required to show compliance with Env-Sw 1203.01(c) and (d); and

(h) Certification, in addition to that required by Env-Sw 303.04, signed by the applicant attesting to the following:

(1) That the applicant has read and understands, and shall comply with all applicable requirements for the siting, design, construction, operation and closure of the facility as identified in Env-Sw 311.02;

(2) For a facility with an active life longer than 90 days, that:

a. An operating plan and closure plan, meeting the content and format requirements specified in Env-Sw 1105.11 and Env-Sw 1106.04 respectively, have been prepared and shall be available and maintained as specified by Env-Sw 1202.02(a)(2) and (3); and

b. The facility shall operate and close in conformance therewith;

(3) That the applicant has filed a copy of the application with the host municipality and host solid waste management district as required pursuant to Env-Sw 303; and

(4) That the applicant and all persons identified in Env-Sw 303.14(a) meet the compliance criteria specified in with Env-Sw 303.14(b).

Env-Sw 311.04 Application Filing. The applicant shall file an application for a permit-by-notification in accordance with Env-Sw 303, as follows:

(a) All information required by Env-Sw 311.03 shall be compiled into one comprehensive submittal;

(b) The applicant shall sign and file 4 copies of the application with the department, including the following:

(1) The fee specified in Env-Sw 310; and

(2) Three legal sized postage paid envelopes, bearing no return address and addressed in capital letters to the:

a. Applicant;

b. Host municipality; and

c. Host solid waste management district; and

(c) The applicant shall concurrently file a copy of the application with the host municipality and host solid waste management district.

Env-Sw 311.05 Application Review and Decision. The application shall be processed in accordance with Env-Sw 304 and Env-Sw 305.

## PART Env-Sw 312 RESEARCH AND DEVELOPMENT PROJECTS PERMITTING PROVISIONS

### Env-Sw 312.01 Purpose and Applicability.

(a) The rules in this part specify the provisions for obtaining a research and development facility permit.

(b) A research and development facility permit shall apply to research and development projects, as defined in Env-Sw 104, except no permit shall be required for research and development facilities identified in Env-Sw 302.03(b)(7).

### Env-Sw 312.02 Applicable Requirements and Limitations.

(a) A research and development facility permit shall be issued for research and development projects meeting the following requirements:

(1) Funding for the project shall be by public or private research grant monies distributed after submission of a written proposal for the scope of the project;

(2) A government agency or research institution, such as a public or private university, shall conduct or supervise the project; and

(3) Subject to (b) below, the project shall comply with:

- a. Env-Sw 1000;
- b. Env-Sw 1100, as applicable based on active life expectancy;
- c. Env-Sw 400 through Env-Sw 800 based on the functional classification of project activity(s);
- d. Env-Sw 900 depending on the type(s) of waste involved by the project; and
- e. Env-Sw 1400.

(b) Compliance with (a)(3)b. through (a)(3)d. above shall not be required if the applicant demonstrates in the permit application that compliance with the requirement shall defeat the purpose of the project and that exemption from the requirement shall not cause a violation of the universal facility requirements in Env-Sw 1000.

(c) A research and development facility permit shall be subject to the provisions of Env-Sw 315 for modification, including renewal and transfer.

(d) A research and development facility permit shall be issued for a limited time period not to exceed the time period required to complete the studies and implement facility closure, based on a schedule provided in the permit application.

Env-Sw 312.03 Research and Development Permit Application Content and Format. The applicant shall provide the following information in the permit application, compiled in the order listed below:

- (a) Identification of parties;
- (b) If the project will occur at a facility which holds a permit issued by the department, identification of the facility by name, location including street and municipality, and permit number;
- (c) If the project will occur at a location other than an already permitted facility, identification of the unpermitted location including the street address and municipality;
- (d) The name(s) and address(es) of the person(s) providing funding for the project in accordance with Env-Sw 312.02(a);
- (e) Identification of:
  - (1) The government agency or research institution, such as a public or private university, that will conduct or supervise the project pursuant to Env-Sw 312.02(a); and
  - (2) The name(s), address(es) and qualifications of the investigator(s) who will be undertaking the project, including designation of the lead investigator who will have overall primary responsibility for the project;
- (f) A proposal for the scope of the project, including:
  - (1) The type(s) and quantity of wastes to be studied;
  - (2) The process to be studied;
  - (3) If the project relates to activities at a permitted facility, a description of how the study so relates;
  - (4) The anticipated results of the study; and
  - (5) The length of time requested for the study;
- (g) Copies of all english-language articles or reports published in scientific or technical journals which document or otherwise discuss studies of the process or methods proposed to be studied, and copies of all foreign-language articles or reports, translated into english, which have been published in scientific or technical journals which reflect negatively on the process or methods proposed to be studied;
- (h) Pursuant to the requirements of Env-Sw 1006:
  - (1) A description of how and when the wastes used in the study will be ultimately disposed;
  - (2) A description of how any equipment or property used in the study will be closed; and
  - (3) The schedule for closure;
- (i) A certification signed by the lead investigator that the project shall not contravene the applicable requirements for permitting research and development projects, as specified in Env-Sw 312.02; and
- (j) Completed personal and business disclosure forms pursuant to Env-Sw 316, for the applicant,

lead investigator, and facility operator, if unable to provide compliance certification pursuant to Env-Sw 303.14.

Env-Sw 312.04 Research and Development Permit Application Filing. Applications for a research and development facility permit shall be signed and filed by the applicant in accordance with Env-Sw 303, with the fee specified in Env-Sw 310.

Env-Sw 312.05 Research and Development Permit Application Review and Decision.

- (a) Applications for a research and development facility permit shall be processed by the department pursuant to the provisions of Env-Sw 304 and Env-Sw 305.
- (b) As a condition of any permit issued, the permittee shall provide the following information:
  - (1) By March 31, an annual report prepared by the lead investigator which summarizes the work completed for the previous calendar year and provides a summary of all data generated;
  - (2) Within 3 months following the termination of the project, a project summary report prepared by the lead investigator including a summary of the project, a summary of all data generated, and a discussion of the results of the study;
  - (3) If the project will be the subject of an article for publication, a copy of the article or a draft of the article; and
  - (4) Copies of all data generated when required to support any project finding which will be used to obtain another permit, permit exemption, permit modification or waiver to any solid waste or hazardous waste rule.

#### PART Env-Sw 313 EMERGENCY FACILITY PERMIT PROVISIONS

Env-Sw 313.01 Purpose and Applicability.

- (a) The rules in this part shall specify requirements for obtaining an emergency facility permit.
- (b) An emergency facility permit shall apply to facilities which operate for a limited period of time in response to any emergency for which no other readily available response exists and for which a delayed response to obtain another type of permit will result in an unnecessary risk to public health, safety or the environment.

Env-Sw 313.02 Applicable Requirements and Limitations.

- (a) An emergency facility permit shall be issued for facilities identified in Env-Sw 313.01(b) meeting the following requirements:
  - (1) Env-Sw 1000;
  - (2) Env-Sw 1100, as applicable based on active life expectancy;
  - (3) Env-Sw 400 through Env-Sw 500, as applicable based on the functional classification of the facility; and
  - (4) Env-Sw 900, as applicable based on the type of waste the facility manages.

(b) The requirements in (a)(2) and (a)(4) above shall not apply if the department determines, based on the nature of the emergency and the information in the permit application, that compliance with the requirement will prohibit effective emergency response.

(c) An emergency permit shall be subject to the provisions of Env-Sw 315 for modification, including permit transfer and renewal.

Env-Sw 313.03 Pre-application Contact.

(a) Prior to filing an application for emergency permit, the applicant, or affiliated person having first hand knowledge of the situation, shall contact the department by telephone or in person to report that an emergency condition exists.

(b) The applicant or affiliated person having first hand knowledge of the situation shall identify:

- (1) The nature of the emergency;
- (2) The types of waste involved;
- (3) The desired response action;
- (4) The estimated schedule for effective emergency response; and
- (5) Other information relevant to determining that an emergency condition as specified in Env-Sw 313.01(b) exists.

(c) Based on the information provided pursuant to (b) above, the department shall make a preliminary determination as to the applicability of an emergency permit pursuant to the provisions of Env-Sw 313.01(b) and so advise the applicant.

(d) If the department determines that the situation warrants an application for emergency permit, the department shall make a preliminary determination as to which of the discretionary permit application requirements shall not apply, as provided in Env-Sw 313.02(b), and shall so advise the applicant.

Env-Sw 313.04 Emergency Facility Permit Application Content and Format. The applicant for an emergency facility permit shall provide the following information compiled in the order shown:

- (a) Identification of parties;
- (b) Facility identification;
- (c) A description of the emergency conditions that pose the threat to public health, safety or the environment, including an explanation of the cause of the emergency conditions;
- (d) Certification from the local health officer or fire chief that the conditions do pose a threat to public health, safety or the environment, or, if such certification cannot be obtained, a statement that such certification was sought and an explanation as to why certification was refused;
- (e) A description of the activity proposed to address the emergency conditions and information to demonstrate the activity shall comply with all applicable permitting requirements; and
- (f) A description of any post-activity monitoring proposed.

Env-Sw 313.05 Emergency Facility Permit Application Filing. Applications for an emergency facility permit shall be signed and filed by the applicant in accordance with Env-Sw 303.

Env-Sw 313.06 Emergency Facility Permit Application Processing. Applications for an emergency facility permit shall be processed by the department in accordance with Env-Sw 304 and Env-Sw 305, as follows:

(a) Following receipt of a complete application, the department shall determine whether the information provided in the permit application and other available information demonstrates that the proposed activity shall be necessary to protect the environment, public health and safety;

(b) If the department determines that the proposed activity is necessary to protect the environment, public health and safety and that all other requirements identified in Env-Sw 313.01(b) and Env-Sw 313.02 are met, the department shall issue the permit;

(c) If the department determines it shall issue a permit, authorization to commence the emergency response activity shall be given orally by the director, or person so authorized by the director, and a written permit shall be issued within 10 working days thereafter; and

(d) An emergency permit shall be effective for the time period required to complete the emergency response action(s) identified in the permit and complete facility closure.

#### PART Env-Sw 314 STANDARD FACILITY PERMITTING PROVISIONS

##### Env-Sw 314.01 Purpose and Applicability.

(a) The rules in this part specify the requirements for obtaining a standard permit.

(b) A standard permit shall apply to a facility which:

- (1) Is not permit-exempt pursuant to Env-Sw 302.03;
- (2) Is not eligible for a permit-by-notification pursuant to Env-Sw 407, Env-Sw 507, Env-Sw 607, or Env-Sw 707;
- (3) Is not eligible for a research and development permit pursuant to Env-Sw 312;
- (4) Is not eligible for an emergency permit pursuant to Env-Sw 313; and
- (5) If a temporary permit facility, it elects to continue operating following call of the temporary permit and is not a landfill.

##### Env-Sw 314.02 Applicable Requirements and Limitations.

(a) A standard permit facility shall comply with:

- (1) Env-Sw 1000;
- (2) Env-Sw 1100, if the facility has an active life longer than 90 days;
- (3) Env-Sw 400 through Env-Sw 800, as applicable based on the functional classification of the facility;

- (4) Env-Sw 900, as applicable based on the type of waste managed by the facility; and
- (5) Env-Sw 1400.

(b) A standard permit shall be subject to the provisions in Env-Sw 315 for permit modification, including permit transfer and renewal.

Env-Sw 314.03 Standard Facility Permit Application Content and Format.

- (a) A standard permit application shall be organized and prepared by the applicant as follows:
  - (1) Section 1, “identification”, shall include the information required by Env-Sw 314.04 and Env-Sw 314.05;
  - (2) Section 2, “facility description”, shall include the information required by Env-Sw 314.06;
  - (3) Section 3, “other permits”, shall include the information required by Env-Sw 314.07;
  - (4) Section 4, “legal notifications and agreements”, shall include the information required by Env-Sw 314.08 and Env-Sw 314.09;
  - (5) Section 5, “site report”, shall include the information required by Env-Sw 314.10;
  - (6) Section 6, “plans and specifications”, shall include the information required by Env-Sw 314.11;
  - (7) Section 7, “operating plan”, shall be:
    - a. Prepared in accordance with Env-Sw 1105.11; or
    - b. Marked “not applicable” if the facility is no longer operating and is not proposing to recommence operations;
  - (8) Section 8, “closure plan”, shall be prepared in accordance with Env-Sw 1106.04;
  - (9) Section 9, “financial report”, shall include the information required by Env-Sw 314.12;
  - (10) Section 10, “performance history”, shall include:
    - a. The information required by Env-Sw 303.13 and Env-Sw 303.14; and
    - b. Certification that the information required by Env-Sw 316 has been submitted to the NHDoJ, if applicable;
  - (11) Section 11, “public benefit”, shall include the information required by RSA 149-M:11 in conformance with the provisions of Env-Sw 1005.05;
  - (12) Section 12, “signature”, shall include the signatures required by Env-Sw 303; and
  - (13) Section 13, “fee”, shall include a fee calculation form provided by the department, which shall contain the information required to calculate the permit application fee in accordance with Env-Sw 310.

Env-Sw 314.04 Facility Identification. The applicant shall identify the facility, by providing the following information:

- (a) Facility identification, as specified by Env-Sw 103.02; and
- (b) Facility status, including:
  - (1) Whether the facility is a proposed or existing facility; and
  - (2) Identification of solid waste management permits and other approvals already issued by the department for the facility.

Env-Sw 314.05 Identification of Parties. The applicant shall identify parties, as specified by Env-Sw 103.22.

Env-Sw 314.06 Facility Description. The applicant shall describe the facility, including the following information:

- (a) Facility functional classification as identified in Env-Sw 302.05;
- (b) The type of ownership of the facility, namely whether a public facility or private facility;
- (c) The facility service type, namely whether a limited service area facility or an unlimited service area facility;
- (d) The type(s) of waste to be received by the facility and the type(s) of waste to be prohibited by the facility, or, for a facility which is no longer operating and which is not proposing to recommence operations, the type(s) of waste the facility did receive;
- (e) The capacity for each facility function as follows:
  - (1) Storage, expressed in tons and cubic yards;
  - (2) Processing or treatment, expressed in tons and cubic yards per day on average annually; and
  - (3) Disposal, expressed in tons and cubic yards;
- (f) The designed life expectancy of the facility or, for a facility which is no longer operating and which is not proposing to recommence operations, the date the facility started operating and the date the facility stopped operating; and
- (g) Identification of the facility service area, which:
  - (1) For a limited service area facility, shall be specified by identifying the precise geographic area(s) or generator(s), or both, to be served by the facility; and
  - (2) For an unlimited service area facility, shall be specified by identifying the geographic area(s) or generators, or both, most likely to be served by the facility.

Env-Sw 314.07 Status of Other Permits/Approvals. The applicant shall identify and provide the status of other required permits and approvals as follows:

(a) Identify, in a list, all local and other state or federal permits or approvals which are, or may be required, for the facility; and

(b) Indicate in the list the status of each application or approval, as follows:

- (1) If an application has not yet been filed, the anticipated filing date;
- (2) If an application has been filed, the date of filing and the nature of any subsequent communications from the issuing authority, if any; and
- (3) If a permit or approval has been issued, the date of issuance and the expiration date, if any.

Env-Sw 314.08 Legal Notifications and Agreements.

(a) Each applicant for a standard permit shall notify all abutters, the host municipality, host solid waste district and other affected entities in accordance with Env-Sw 303.

(b) The applicant shall include in the permit application:

- (1) A copy of the written notification(s);
- (2) A list of all required recipients including name and mailing address; and
- (3) Copies of the signed registered letter receipts or signed acknowledgments of receipt for each required recipient.

Env-Sw 314.09 Concurrence of Property Owner. If the applicant and the property owner are not the same, the applicant shall provide information to demonstrate how compliance with the requirements of Env-Sw 1003.03 shall be obtained prior to the effective date of a permit, if issued, and shall include copies of all relevant legal agreements.

Env-Sw 314.10 Site Report.

(a) The applicant shall provide a site report which either:

- (1) Demonstrates that:
  - a. The location of the facility complies with all applicable siting requirements, as noted in Env-Sw 314.02(a); and
  - b. The facility site is, in all other respects, a suitable location for the facility; or
- (2) For an existing facility which is no longer operating and which is not proposing to recommence operations, identifies and describes:
  - a. The location of the facility;
  - b. Existing site features and conditions;
  - c. The physical relationship of the facility to its surroundings; and

- d. Environmental effects, both adverse and beneficial, caused by the facility.
- (b) The information required by (a) above shall specifically include:
- (1) A copy of the local tax map(s) which shows the property on which the facility is, or will be, sited and which identifies all abutters required to be notified pursuant to Env-Sw 303;
  - (2) Map(s) identifying surrounding land use and zoning;
  - (3) A narrative description of the site, including:
    - a. A physical description;
    - b. A 50-year history of the use(s) of the site; and
    - c. A discussion of any known or suspected conditions at the site which are or should be of environmental, public health or safety concern;
  - (4) Map(s) and narrative discussion of the facility's proximity to and impact on sensitive environments, including, but not limited to, flood hazard zones, wetlands, habitat for endangered or threatened wildlife, designated rivers, other surface waters, and water supplies;
  - (5) A hydrogeological report of the site if the facility has managed or will manage waste which has the potential to cause groundwater or surface water contamination, including, as applicable, all information required by the administrative rules for groundwater management and groundwater release detection permits, Env-Wm 1403;
  - (6) Discussion of anticipated traffic impacts by the facility, unless the facility is no longer operating and is not proposing to recommence operations; and
  - (7) Other information as required to demonstrate compliance with the applicable siting requirements.

Env-Sw 314.11 Plans and Specifications. The applicant shall provide plans and specifications prepared in accordance with Env-Sw 1103.05, as follows:

- (a) For a proposed facility, the applicant shall submit preliminary design plans and specifications with calculations and other supporting documentation necessary to demonstrate compliance with all applicable design requirements, as noted in Env-Sw 314.02(a); and
- (b) For an existing facility, the applicant shall submit:
  - (1) A plan showing the existing facility; and
  - (2) Preliminary design plans and specifications, as specified by (a) above, for any proposed changes to the existing design.

Env-Sw 314.12 Financial Report. The applicant shall provide a financial report, including:

- (a) The estimated cost of constructing the facility, unless the facility is an existing facility and no new construction is proposed;
- (b) The type and source of financing for any new construction being proposed;

(c) The estimated facility operating cost(s), unless the facility is no longer operating and is not proposing to recommence operations;

(d) For a proposed facility or an existing facility that will continue operating, the estimated tipping fees or, if no tipping fee will be assessed by the facility, the estimated average cost per ton to manage waste at the facility;

(e) The estimated costs of closure and post-closure monitoring based on the requirements set forth in Env-Sw 1400; and

(f) A financial assurance plan in accordance with Env-Sw 1400.

Env-Sw 314.13 Other Information. If the information submitted is insufficient for the department to make an independent determination that the facility and all persons associated therewith comply with the requirements of RSA 149-M and the solid waste rules and protect human health, safety and the environment, the applicant shall submit such additional information as the department determines necessary to make the determination.

Env-Sw 314.14 Application Filing. Standard facility permit applications shall be signed and filed by the applicant as specified in Env-Sw 303, with the fee as specified in Env-Sw 310.

Env-Sw 314.15 Application Review and Decision. Standard facility permit applications shall be reviewed in accordance with Env-Sw 304 and Env-Sw 305.

## PART Env-Sw 315 PERMIT MODIFICATION

### Env-Sw 315.01 Applicability.

(a) Except as specified by (b) through (d) below, the rules in this part shall apply to modifying facility permits issued pursuant to RSA 149-M and the solid waste rules, including action to transfer a permit and renew an expiring permit.

(b) The rules in this part shall not apply to transferring a permit-by-notification, as specified by Env-Sw 311.02(c).

(c) For applicants unable to certify compliance pursuant to Env-Sw 303.14, the provisions for obtaining a type I-B permit modification shall apply instead of the rules in this part pertaining to a type III permit modification.

(d) The rules in this part shall not apply to permit modifications initiated by the department pursuant to Env-Sw 306.

### Env-Sw 315.02 Definitions.

(a) “Type I modification” means an amendment to the terms and conditions of a permit that is not a type II through type V modification. The term includes type I-A and type I-B modifications.

(b) “Type I-A modification” means a type I modification that has the potential to adversely affect the state’s ability to achieve the waste reduction goal in RSA 149-M:2 by means of establishing and maintaining an integrated system of facilities which is consistent with the hierarchy in RSA 149-M:3 and which provides a substantial public benefit pursuant to RSA 149-M:11, including but not limited to:

- (1) Increasing the approved design capacity of a facility;
- (2) Changing the expiration date of a permit;
- (3) Reducing the operating life expectancy of a New Hampshire landfill without a comparable reduction in the permitted capacity of the landfill, as by directly or indirectly increasing the quantity of waste received daily;
- (4) Expanding the permitted service area of a facility;
- (5) Changing the facility service type from a limited service area facility to an unlimited service area facility; and
- (6) Changing facility operations to include a waste management method less preferred in the RSA 149-M:3 hierarchy than authorized by the current terms and conditions of the permit.

(c) “Type I-B modification” means a type I modification that is not a type I-A modification because, based on information available at the time the modification is proposed, there is no expectation that the proposed change will adversely affect the state’s ability to achieve the waste reduction goal in RSA 149-M:2 by establishing and maintaining an integrated system of facilities which is consistent with the hierarchy in RSA 149-M:3 and which provides a substantial public benefit pursuant to RSA 149-M:11. The term includes modifications that would fall within the scope of a type III permit modification, but are excluded from being a type III modification because the permittee is unable to certify compliance pursuant to Env-Sw 303.14.

(d) “Type II modification” means an amendment to the terms and conditions of a permit to approve and incorporate by reference final or revised design, operating, financial assurance or closure plans for a facility which have been prepared pursuant to a condition of the permit or a solid waste rule specifically requiring submission of such plans, including but not limited to:

- (1) Approving final plans for construction, operation, financial assurance or closure of a facility based on preliminary plans provided in the application, as required to satisfy prerequisites for construction or operation pursuant to Env-Sw 1100, and Env-Sw 305.05(b) and (c); and
- (2) Approving preliminary plans for closure of a landfill under the provisions of a temporary permit pursuant to Env-Sw 307.08(b).

(e) “Type III modification” means an amendment to the terms and conditions of a permit, held by a permittee able to certify compliance pursuant to Env-Sw 303.13 and Env-Sw 303.14, to effect one of the following minor changes:

- (1) A change in facility operating hours within the limits specified in Env-Sw 1105.08(a) or within alternative limits specified in the permit pursuant to Env-Sw 1105.08(b);
- (2) A change in a key above ground site feature, including a facility structure or appurtenance, which:
  - a. Is made subsequent to filing record drawings in accordance with Env-Sw 1104.07;
  - b. Does not:

1. Alter the permitted function(s) of the facility;
2. Change the basis of the approved facility design; or
3. Violate any applicable siting criteria specified in the solid waste rules; and

c. Is merely a change to improve facility operations within the limits specified in the permit;

(3) A change in facility operations to separately collect, store and transfer source separated select recyclable materials not previously managed separately by the facility, to the extent that the activity:

- a. Does not increase either the approved design or storage capacity of the facility; and
- b. Does not require a change in the approved financial assurance plan of record for the facility;

(4) For landfills, a change in the type of cover material to be used at the facility, pursuant to Env-Sw 806.03;

(5) A name change for the permittee or facility that does not constitute a type IV modification; and

(6) A change in organizational structure, officers, directors, partners, key employees or entities holding 10% or more of the permittee's equity or debt that does not constitute a type IV modification.

(f) "Type IV modification" means an amendment to the terms and conditions of a permit to authorize permit transfer and record a change in the:

- (1) Operational control of a facility; or
- (2) Ownership of the facility, as follows:
  - a. For a partnership, a change in the majority of general partners;
  - b. For a corporation, a transfer of all corporate assets or of a majority of voting shares to a new individual or entity;
  - c. For other organizations, a transfer of the control of the organization to a new individual or entity; and
  - d. For an individual, transfer of control to another individual or entity.

(g) "Type V modification" means an amendment to the terms and conditions of a permit pursuant to Env-Sw 1105.06(b) to allow facility records to be stored at off-site locations or to be destroyed.

#### Env-Sw 315.03 Approval Required.

- (a) Before making a modification to the design, construction, operation or closure of a facility as

permitted by the department, the permittee shall obtain written approval for such modification in accordance with this part.

(b) A permittee shall request approval to implement a facility modification by filing an application for permit modification as follows:

- (1) For a type I modification, the permittee shall submit an application that provides the information specified in Env-Sw 315.05;
- (2) For a type II modification, the permittee shall submit an application that provides the information specified in Env-Sw 315.06;
- (3) For a type III modification, the permittee shall submit an application in the form of a notification that provides information specified in Env-Sw 315.07;
- (4) For a type IV modification, the existing permittee and proposed new permittee shall be co-applicants and shall submit an application that provides the information specified in Env-Sw 315.08; and
- (5) For a type V modification, the permittee shall submit an application that provides information as specified in Env-Sw 315.09.

Env-Sw 315.04 Permit Modification Application Filing Procedures.

(a) All applications to modify a permit shall be signed and filed by the permittee in accordance with Env-Sw 303.

(b) Applications for a type IV modification shall be signed and filed by both the existing permittee and the proposed permittee, as co-applicants.

(c) Applications for a type III modification shall include the following signature requirements in addition to the requirements specified in Env-Sw 303:

- (1) A signed statement by the permittee certifying that:
  - a. The proposed change is within the defined limits of a type III modification pursuant to Env-Sw 315.02;
  - b. The proposed change shall not cause the facility to contravene any applicable requirement in Env-Sw 1000 or violate any other condition of the permit; and
  - c. In accordance with Env-Sw 303.13, the compliance standards in Env-Sw 303.14 are met;
- (2) If the permittee is not the property owner, a signed statement by the property owner to certify acceptance of the modification; and
- (3) For a type III modification to effect a name change pursuant to Env-Sw 315.02(e), certification that:
  - a. The proposed change is based solely on a change in the name of the permittee or facility, as applicable, and that no change in officers, directors, partners, key employees or persons holding 10 percent or more of the permittee's equity or debt shall occur as a

consequence of the change in name; and

- b. That the permittee shall publish notice and submit proof thereof as required by Env-Sw 305.06(e).

Env-Sw 315.05 Application Content and Format, Type I Modifications. For a type I permit modification, the permittee shall provide the following information and materials, compiled in the order listed below:

- (a) Facility identification;
- (b) Identification of parties;
- (c) A complete description of the proposed modification, including:
  - (1) The type of modification as specified by Env-Sw 315.02;
  - (2) Identification of each written permit condition which shall require amendment to effect the proposed modification and draft language for the same;
  - (3) Identification of each document incorporated by reference into the permit and requiring amendment to effect the proposed modification, including design plans, operating plans, closure plans and financial assurance plans;
  - (4) Draft amendments for each document identified pursuant to (3) above, as follows:
    - a. If the proposed modification requires changes to the last approved facility design plan(s) of record, the revised design plan(s) shall be prepared in accordance with Env-Sw 1103.05;
    - b. If the proposed modification requires changes to the last approved facility operating plan of record, the required amendments shall be prepared in accordance with Env-Sw 1105 and, subject to e. below, may be presented in the form of replacement pages ready for substitution into the plan of record, each page being clearly marked to show the date of revision;
    - c. If the proposed modification requires changes to the last approved facility closure plan of record, the required amendments shall be prepared in accordance with Env-Sw 1106 and, subject to e. below, may be presented in the form of replacement pages ready for substitution into the plan of record, each page being clearly marked to show the date of revision;
    - d. If the proposed modification requires changes to the last approved financial assurance plan of record, the proposed revisions shall be presented in the form of a complete financial assurance plan as specified in Env-Sw 1400 and shall include all related draft financial assurance documents required to effect the proposed modification; and
    - e. If there is no last approved plan of record for any of a. through d. above, a plan shall be provided as specified in Env-Sw 1103.05, Env-Sw 1105, Env-Sw 1106 and Env-Sw 1400, as applicable, based on the proposed modified facility; and
- (5) Information demonstrating that the proposed modified facility meets all requirements

of the solid waste rules;

- (d) A proposed schedule for implementing the modification;
- (e) A statement of need describing why the proposed change is necessary or desirable;
- (f) Identification of the impacts, both positive and adverse, which the proposed modification will have, including the following considerations:
  - (1) The effect the modification will have on facility function, capacity, life expectancy, service type and service area;
  - (2) The effect the modification will have on the environment, public health and safety;
  - (3) The effect the modification will have on the state's ability to achieve the goals and objectives specified in RSA 149-M:2;
  - (4) The effect the modification will have on establishing and maintaining integrated waste management systems consistent with the hierarchy of waste management methods in RSA 149-M:3; and
  - (5) Information that demonstrates that the facility, as modified, will be consistent with the state solid waste management plan and the applicable district plan, pursuant to RSA 149-M:12, I(b);
- (g) For a type I-A modification, a demonstration of public benefit in accordance with RSA 149-M:11 and in conformance with the provisions of Env-Sw 1005.05;
- (h) Identification and status of all other permits or approvals necessary to effect the proposed modification;
- (i) Proof that municipalities, districts and other affected entities have been provided a copy of the application and a notice of filing as specified by Env-Sw 303; and
- (j) For a type I-A modification, proof that notification of abutters has been made in accordance with Env-Sw 303.

Env-Sw 315.06 Application Content and Format, Type II Modifications. For a type II permit modification, the permittee shall provide:

- (a) Facility identification;
- (b) Identification of parties;
- (c) A narrative description of the proposed modification, including:
  - (1) The type of modification as specified by Env-Sw 315.02;
  - (2) Copy of the plans for which approval is being sought, as follows:
    - a. Construction plans and specifications shall be prepared in accordance with Env-Sw 1103.05;

b. Operating plans shall be prepared in accordance with Env-Sw 1105 and, subject to (d) below, may be presented in the form of replacement pages ready for substitution into the last approved plan of record, each page being clearly marked to show the date of revision;

c. Closure plans shall be prepared in accordance with Env-Sw 1106 and, subject to (d) below, may be presented in the form of replacement pages ready for substitution into the last approved plan of record, each page being clearly marked to show the date of revision; and

d. Financial assurance plans shall be prepared in accordance with Env-Sw 1400;

(3) Identification of the preliminary plans incorporated by reference into the permit which provide the basis for the final plans; and

(4) A proposed schedule for implementing the modification.

(d) If there is no approved plan of record, as referenced in (c)(2)b. and (c)(2)c. above, or the approved plan of record does not conform to the applicable plan requirements in Env-Sw 1105 or Env-Sw 1106, a plan shall be provided that meets the applicable requirements and includes all modifications for which approval is being sought.

Env-Sw 315.07 Application Content and Format, Type III Modification. For a type III permit modification, the permittee shall provide:

(a) Facility identification;

(b) Identification of parties;

(c) A description of the proposed modification, including:

(1) Identification of the type of modification as specified by Env-Sw 315.02; and

(2) Identification of the proposed changes, as follows:

a. If for a change in facility operating hours, the days and hours of operation after the modification takes effect;

b. If for a change in site feature, a description of the changed feature and a site plan showing the changed feature;

c. If for a change in the type of recyclables collected, identification of the new types being collected and the method for storage;

d. If for a change in the type of landfill cover material to be used at the facility, identification of the type in conformance with the options provided in Env-Sw 806.03;

e. If for a change in permittee or facility name, identification of the new name; and

f. If for a change in organizational structure, officers, directors, partners, key employees or entities holding 10% or more of the permittee's equity or debt:

1. A precise description of what is changing;

2. The personal and business disclosure and performance history information required by Env-Sw 316; and
3. Proof of operator certification if the proposed change requires a change in operator certification pursuant to Env-Sw 1600 and Env-Sw 1005.07; and

(d) A proposed schedule for implementing the modification.

Env-Sw 315.08 Application Content and Format, Type IV Modifications. For a type IV permit modification, the existing permittee and the proposed permittee, acting as co-applicants, shall provide:

- (a) Facility identification;
- (b) Identification of parties, both existing and proposed;
- (c) Description and supporting documentation for the proposed modification, including:
  - (1) Identification of the type of modification as specified in Env-Sw 315.02;
  - (2) Reference to each written permit condition which shall require amendment to effect the proposed modification and draft language for the same;
  - (3) The personnel and business information and performance history information required by Env-Sw 316;
  - (4) Proof of operator certification if the proposed change shall require a change in operator certification pursuant to Env-Sw 1600 and Env-Sw 1005.07; and
  - (5) A financial assurance plan by the proposed new permittee for the cost of closing the facility pursuant Env-Sw 1400;
- (d) A proposed schedule for implementing the modification;
- (e) Identification and status of all other permits or approvals necessary to effect the proposed modification, if any;
- (f) Proof that the host municipality and host solid waste management district have been provided a copy of the application and a notice of filing as specified by Env-Sw 303; and
- (g) Proof that notification of abutters has been made in accordance with Env-Sw 303.

Env-Sw 315.09 Application Content and Format, Type V Modification. For a type V permit modification, the permittee shall provide:

- (a) Facility identification;
- (b) Identification of the parties;
- (c) A description of the proposed modification, including:
  - (1) Identification of the type of modification as specified by Env-Sw 315.02;

- (2) Identification of the contents of the subject record(s), including type of information and time period covered;
- (3) If the proposal is to relocate the records, identification of the following:
  - a. The location where the records are proposed to be stored, by street address, municipality and state;
  - b. The owner of the proposed storage location;
  - c. A description of the measures that shall be taken to protect the records against destruction and to prevent unauthorized access to the records while in storage; and
  - d. A description of how the department shall be provided access to the records pursuant to Env-Ws 2000; and
- (4) If the proposal is to destroy the records, an explanation of need; and
- (d) A proposed schedule for implementing the modification.

Env-Sw 315.10 Application Review and Decision.

- (a) All applications to modify a permit shall be reviewed in accordance with Env-Sw 304 and Env-Sw 305.
- (b) In addition to the provisions for denial in Env-Sw 305.03, the department shall deny any application to modify a permit if:
  - (1) The applicant is unable to certify compliance pursuant to Env-Sw 303.14, unless, for other than a type III permit modification, the applicant:
    - a. Demonstrates in the compliance report that the circumstance(s) for non-compliance are not cause for the department to deny the requested approval pursuant to the provisions of RSA 149-M:9, IX or X; and
    - b. Agrees to comply with a plan and schedule for achieving compliance;
  - (2) The modification constitutes a change in the facility's functional classification as described in Env-Sw 302, which otherwise requires a new facility permit; or
  - (3) The modification constitutes an expansion of facility operations under the provisions of a temporary permit.
- (c) The department shall approve a type V permit modification request to store facility records off-site if the application demonstrates that the records shall be adequately protected against loss or damage and shall remain accessible to the department as required by the solid waste rules.
- (d) The department shall not approve a type V permit modification to destroy records, if:
  - (1) Any benefits will be obtained by requiring the records to be retained, for instance by assisting in development of a closure or post-closure monitoring plan or otherwise to assist future studies to determine compliance with state or federal regulations; or

- (2) The facility is the subject of any pending investigation or enforcement action.
- (e) Pursuant to Env-Sw 1104, a type II permit modification granting construction plan approval shall:
  - (1) Expire one year from the date of issuance if construction is not commenced; and
  - (2) Be subject to terms and conditions as necessary to assure that the facility is constructed in accordance with the approved plans and specifications, all applicable rules and regulations, and other terms and conditions of the permit.

## PART Env-Sw 316 PERFORMANCE HISTORY REQUIREMENTS

Env-Sw 316.01 Purpose. The rules of this part are intended to provide the department with the information necessary to determine, as provided in RSA 149-M:9, III and IX, whether an applicant, owner, facility operator, or any of the applicant's officers, directors, partners, key employees, or major debt or equity holders, has been convicted of or pled guilty or no contest to a felony within 5 years of the date of the permit application, or has failed to demonstrate sufficient reliability, expertise, integrity and competence to operate a solid waste facility.

### Env-Sw 316.02 Applicability.

- (a) Except as noted in (b) below, the rules in this part shall apply to applicants for the following types of permits and approvals:
  - (1) Standard facility permit pursuant to Env-Sw 314;
  - (2) Research and development facility permit pursuant to Env-Sw 312, whenever the applicant is unable to certify compliance pursuant to Env-Sw 303.14;
  - (3) Type IV permit modification as specified in Env-Sw 315 to transfer ownership or operational control of the facility; and
  - (4) Type I-B permit modification to approve a change in the organizational structure of the permittee, including:
    - a. A change resulting in a new individual or entity holding 10% or more of the permittee's equity or debt;
    - b. The addition of a new officer, director, or partner; or
    - c. The addition of any individual or entity having managerial or supervisory or substantial decision-making authority and responsibility for the management of facility operations or activities for which approval is being sought.

(b) The rules in this part shall not apply to an applicant which is a town, governmental unit, agency or political subdivision of the state, or combination thereof.

### Env-Sw 316.03 Disclosure Required.

(a) Applicants, as identified in Env-Sw 316.02, shall submit to the NHDNJ, as part of the application, personal and business disclosure information pursuant to Env-Sw 316.06 for all entities and individuals identified in Env-Sw 316.05.

- (b) Applicants shall cooperate fully with the NHDoJ during the background investigation.

Env-Sw 316.04 Form of Disclosure.

- (a) Disclosure of personal and business information shall be on such forms as provided by the NHDoJ.

- (b) The applicant shall sign the forms to attest to:

- (1) Having made diligent inquiry into all matters disclosed; and
- (2) The truth and accuracy of all matters disclosed.

Env-Sw 316.05 Entities and Individuals Required to Submit Information.

- (a) If the applicant is an individual, the applicant shall submit a completed personal and business disclosure form for the applicant.

- (b) If the applicant is not an individual, the applicant shall submit:

- (1) A completed business disclosure form for:

- a. The applicant;
- b. Each entity that is, or is proposed to be:
  - 1. A partner;
  - 2. An entity contracted with the applicant to operate, manage or supervise the facility or activities for which approval is being sought;
  - 3. An entity holding of 10% or more of the applicant's debt; or
  - 4. An entity holding 10% or more of the applicant's equity; and
- c. The parent corporation, holding corporation, and any other entity that exercises control over the facility or activities for which approval is being sought; and

- (2) A completed personal disclosure form for each individual which has, or is proposed to have, any of the following relationships with the applicant:

- a. Director;
- b. Partner;
- c. Officer;
- d. All individuals and entities having managerial or supervisory or substantial decision-making authority and responsibility for the management of facility operations or the activity(s) for which approval is being sought;
- e. Holder of 10% or more of the applicant's debt; or

f. Holder of 10% or more of the applicant's equity.

(c) If the applicant and the facility operator are not the same, the applicant shall also submit personal and business disclosure information for the facility operator as though the facility operator is the applicant and as described in (a) and (b) above.

Env-Sw 316.06 Scope of Disclosure.

(a) Each individual required to submit a disclosure form shall provide the information requested on the personal information disclosure form, including:

- (1) Personal identifying data such as name, address, physical description, date and place of birth, nationality, residential history and motor vehicle information;
- (2) Marital and family information, including information about relatives in the solid waste industry;
- (3) Education, military and professional experience, employment history, public offices, and waste management licenses and experience;
- (4) Other business and financial interests; and
- (5) Involvement in professional or environmental violations, or civil or criminal proceedings.

(b) Each entity required to submit a disclosure form shall provide the information requested on the business information disclosure form, including:

- (1) Business identifying data such as names, date and nature of organization, ownership, principal location and address, and past and present facilities;
- (2) Corporate, partnership or business venture history and structure, including information about key employees, officers, directors, partners and trustees as applicable;
- (3) Information about subsidiaries and affiliated entities;
- (4) Experience and credentials in the waste management industry, including waste permits and licenses held;
- (5) History of environmental violations, and other administrative, civil or criminal proceedings;
- (6) Equity structure and debt liability; and
- (7) Financial history.

Env-Sw 316.07 Filing of Disclosure Forms.

(a) The applicant shall transmit all original signed disclosure forms by certified mail, return receipt requested or by hand-delivery to the NHDoJ, attn: environmental bureau chief.

(b) The submittal made pursuant to (a) above shall be accompanied by a notice of filing pursuant

to Env-Sw 303.12.

Env-Sw 316.08 Background Investigation Fee. Pursuant to Env-Sw 310 and upon presentation of an accounting and request for payment from the NHDoJ, the applicant shall pay the cost incurred by the NHDoJ to complete the background investigation and prepare a report to the department as required in RSA 149-M:9, III and IX.

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**Appendix**

<b>Rule Section(s)</b>	<b>Statute(s) Being Implemented</b>
Env-Sw 301	RSA 149-M:7
Env-Sw 302	RSA 149-M:7, V
Env-Sw 303	RSA 149-M:7, III; RSA 149-M:9
Env-Sw 304	RSA 149-M:6, V; RSA 149-M:9, VIII; RSA 149-M:11, IV(a)
Env-Sw 305	RSA 149-M:9, VIII; RSA 149-M:12
Env-Sw 306	RSA 149-M:7
Env-Sw 307	RSA 149-M:7
Env-Sw 308	[Reserved]
Env-Sw 309	RSA 149-M:7
Env-Sw 310	RSA 149-M:7, IV; RSA 149-M:9, V
Env-Sw 311	RSA 149-M:7
Env-Sw 312	RSA 149-M:7
Env-Sw 313	RSA 149-M:7
Env-Sw 314	RSA 149-M:7; RSA 149-M:9, III
Env-Sw 315	RSA 149-M:6, III; RSA 149-M:7; RSA 149-M:9
Env-Sw 316	RSA 149-M:7; RSA 149-M:9, IX